Brief of Ketcham for Appellants

Filed Jan. 10, 1898.

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1897.

STERLING R. HOLT ET AL.,
Appellants,
vs.
THE INDIANA MANUFACTURING COMPANY,
Appellee.
} No. 506.

BRIEF FOR APPELLANTS ON MOTION TO DISMISS CAUSE.

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IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1897.

STERLING R. HOLT ET AL.,
Appellants,
vs.
THE INDIANA MANUFACTURING COMPANY,
Appellee.
} No. 500.

BRIEF BY APPELLANTS ON MOTION OF APPELLEE TO DISMISS FOR WANT OF JURISDICTION.

This was a bill in equity, in the United States Circuit Court, to enjoin certain officers from the collection of taxes that had been levied and assessed against the appellee, on the ground that the levy and assessment was void, being in contravention of the constitution of the United States, in that it had attempted to levy a tax upon certain patents held by the appellee granted by the United States, which patents were not subject to taxation.

The appellee is an association incorporated under the manufacturing and mining laws of the State of In-

diana. The plan of taxation of the State of Indiana as to domestic corporations incorporated under the manufacturing and mining laws is to assess against them the value of their tangible property, in case the value of the tangible property exceeds the value of the capital stock, and to assess against them the value of the capital stock in case it exceeds the value of the tangible property. In other words, to reach the values represented by its capital stock without reference to the manner in which it is invested. The plan further provides a local board in each county for the assessment of the property of the corporations existing in that county, and authorizing an appeal to the State Board of Tax Commissioners to any and all persons assessed by the County Board of Review in the event it is supposed that their assessment is excessive. Upon the assesment as shown by the records in the years preceding 1895, the appellee made no effort whatever to appeal from the assessment by the County Board of Review to the State Board of Tax Commissioners, but simply refused to pay the taxes and finally applied to the United States Circuit Court for an injunction against the collection of the taxes on the ground that the laws of the State in that respect contravened the United States Constitution, and a decree was entered perpetually enjoining the collection of the tax.

The appellants upon the theory that the question was rather a question of excessive taxation than of constitutional law, (for if the value of the patents was not in law assessable the assessment was simply excessive, in which event the remedy was by appeal to

the State Board of Tax Commissioners from the excessive assessment rather than to the Circuit Court of the United States to review the action of the assessing officers), prayed an appeal to the Circuit Court of Appeals. This was supposed to be in harmony with the opinion of the Chief Justice, in *Green* v. *Mills*, 16 Circuit Court of Appeals Reports, 516; S. C. 69 Fed. Rep. 852, in which it was held that, while undoubtedly the Circuit Court of Appeals has no jurisdiction to pass upon constitutional questions, if the case could be disposed of without passing upon the constitutional questions, that court would take and exercise jurisdiction.

The Circuit Court of Appeals, however, was of the opinion that the only question presented by the record was the question of the constitutionality of the State law, and dismissed the appeal.

Holt et al. v. *Indiana Mfg. Co.*, 80 Fed Rep. 1.

Thereupon, this appeal was prayed to this court where we are confronted with the motion to dismiss on the ground that the appeal not having been taken within a year from the time of the entry of the final decree, under the last sentence of the last paragraph of section 6, of the act of March 3, 1891, this court is without jurisdiction. It is conceded in the brief of appellee on the motion to dismiss, Appellee's Brief, page 7: "This court undoubtedly has jurisdiction of the question involved in this case," but it is insisted that it has no jurisdiction of the present case for the reason that an appeal was not taken within the statutory

time, so that the sole question presented by this motion to dismiss is whether the last sentence in the last clause of section 6,

"But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed,"

applies generally to all appeals to the Supreme Court from the Circuit Court, or whether it applies alone to appeals from the Circuit Court of Appeals to the Supreme Court.

If section 1008, of the Revised Statutes of the United States authorizing appeals from the Circuit Court of the United States to be taken within two years is still in force, this appeal is properly taken. If it is repealed by the Evarts act, and it is required that all appeals from the Circuit Court must be taken within a year, the appeal is not properly taken and the motion to dismiss should be sustained. It will be noted in the outset that this language, indeed, this entire section does not profess or purport in terms to amend or repeal section 1008 of the Revised Statutes. If it is repealed it is a repeal by implication and repeals by implication are not favored.

Sutherland on Statutory Construction, section 138, p. 179.

Sedgewick on Construction of Statutory and Constitutional Law, p. 98, note *a*.

Hartford v. *U. S.*, 8 Cranch. 109.

Wood v. *U. S.*, 16 Pet. 341.

Arthur v. *Homer*, 96 U. S. 137.

Chew Heong v. *U. S.*, 112 U. S. 536.

McCool v. *Smith*, 1 Black. 459.
Henderson's Tobacco, 11 Wall. 652.

On behalf of the appellants it is insisted that the language at the end of section 6, of the Evarts act (Acts of the 51st Congress, section 2, chapter 517, page 828), applies only to cases of appeal or writs of error to the Supreme Court from final decrees or judgments in the Circuit Court of Appeals; and this presents the question of the proper construction of the act of 1891.

Section 1 of the act provides for the appointment of an additional Circuit Judge. Section 2, for the creation of a Circuit Court of Appeals. Section 3, for the constitution of the court. Section 4 abolishes the appeal from District to Circuit Courts and substitutes in lieu thereof an appeal in proper cases respectively to the Supreme Court or the Circuit Court of Appeals. Section 5 provides for the appellate jurisdiction of the Supreme Court where the appeal is directly from the Circuit Court or District Court, and gives to that court jurisdiction over "the weightier matters of the law," namely, questions of jurisdiction, final sentences in prize cases, felonies, and constitutional questions. Section 6 provides for the jurisdiction of the Circuit Court of Appeals, and confers upon it appellate jurisdiction in all cases other than those to which exclusive appellate jurisdiction is originally conferred upon the Supreme Court. In connection therewith, however, the section provides that the decree of the Circuit Court of Appeals shall be final in the less important cases, namely, where the jurisdiction depends

entirely upon diverse citizenship, or the case arises under patent, revenue, criminal, and admiralty laws. As to each of these the decision of the Appellate Court is made final, except in two instances.

1. Where the Appellate Court desires the information or assistance of the Supreme Court, in which case the Appellate Court is authorized to certify to the Supreme Court certain questions or propositions of law concerning which it desires instructions from the Supreme Court, and in such cases the Supreme Court may answer the question, or take jurisdiction of the entire record and all the questions involved in it.

2. That the Supreme Court may without any suggestion or action by the Circuit Court of Appeals, in a proper case direct the case to be certified to it for its review and determination with the same power and authority as if it had been carried by appeal or writ of error originally to the Supreme Court.

The section then continues—and it should be borne in mind that the section is devoted to the question of jurisdiction, first, of the Circuit Court of Appeals, second, as to the finality of that jurisdiction, and third, as to the questions over which the Supreme Court will exercise revisory jurisdiction over the action of the Circuit Court of Apeals—

"In all cases not hereinbefore, in this section, made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs."

Upon this language the question arises, to what does it refer. Appellee's contention is and must be that it must be taken in the broad sense, and is intended to describe the appellate or revisory jurisdiction of the Supreme Court. The contention of appellants, however, is that it is to be construed with, as a part of, and limited by, the language of section 6. Abundant provision is made in section 5 for the appellate jurisdiction of the Supreme Court. Abundant provision is made wholly without reference to this language in the earlier part of section 6 for the appellate jurisdiction of the Circuit Court of Appeals. If this language is to be construed as defining the cases in which there shall be in the first instance an appeal to the Supreme Court, the language used is superrogatory, for that has sufficiently been described in section 5, and in that event the language quoted "not hereinbefore in this section made final" is not only superfluous, but is contradictory of the general statute, if the Supreme Court has not, other than as provided in the two exceptions named in section 6, appellate jurisdiction over any case, jurisdiction over which is conferred upon the Circuit Court of Appeals in the first instance.

We insist that the language of the first clause of the last paragraph of section 6,

> "In all cases not hereinbefore in this section made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs."

applies to those cases, appellate jurisdiction over which is conferred on the Circuit Court of Appeals, where, by this section, the decree of the Circuit Court of Appeals is not made final. It is obvious from the language of section 6 that there are some cases at least in which the decision of the Circuit Court of Appeals is not final, or the language used in the latter part of the first sentence in the section "shall be final in all cases in which the jurisdiction is dependent entirely," etc., would not have been used, but in lieu thereof the language would have been in substance "shall be final in all such cases," leaving the first and second exceptions to stand.

If the appellate jurisdiction of the Circuit Court of Appeals was confined to those cases in which it is in terms provided that its decree shall be final, there would be some force in the contention that the language of the last paragraph in the section did not refer to appeals and writs of error from the Circuit Court of Appeals to the Supreme Court; but it is clear that there are a great many cases in which appellate jurisdiction is conferred upon the Circuit Court of Appeals, where its decision is not made final.

For example: Appeals are granted from the final judgment of the District Court, under the Evarts act, not as heretofore to the Circuit Court, but directly to the Circuit Court of Appeals, in the following cases:

a. "Suits for penalties and forfeitures incurred under any law of the United States." (Revised Statutes of the United States, section 563, Specification 3d.)

b. "Suits at common law brought by the United States, or by any officer thereof, authorized by law to sue." (*Ib.* Specification 4th.)

c. "Causes of action arising under the postal laws of the United States." (*Ib.* Specification 7th.)

d. "Suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any endorser therof, to recover the amount of such debenture." (*Ib.* Specification 10th.)

e. "Suits authorized by law to be brought by any person for the recovery of damages, on account of any injury to his person or property, or of the deprivation of any right or privilege of the citizen of the United States by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty-five, Title, 'Civil Rights.'" (*Ib.* Specification 11th.)

f. "Suits to recover possession of any office, except that of elector of President or Vice-President, representative or delegate in Congress, or member of a State Legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote on account of race, color, or previous condition of servitude: Provided, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the constitution of the United States, and secured by any

law, to enforce the right of citizens of the United States to vote in all the States." (*Ib.* Specification 13th.)

g. "Proceedings by the writ of *quo warranto*, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress, or of a State Legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the constitution of the United States." (*Ib.* Specification 14th.)

h. "Suits against consuls or vice consuls, except for offenses above the description aforesaid." (*Ib.* Specification 17th.)

And appeals and writs of error are granted to the Circuit Court of Appeals from the decrees or judgments of the Circuit Court in the following cases:

a. "Suits in equity, where the matter in dispute, exclusive of costs, exceed the sum or value of five hundred dollars, and the United States are petitioners." (Revised Statutes of the United States, section 629, Specification 2d.)

b. "Suits at common law, where the United States, or any officer thereof suing under the authority of any act of Congress, are plaintiffs." (*Ib.* Specification 3d.)

c. "Suits and proceedings for the enforcement of any penalties provided by laws regulating the carriage of passengers in merchant vessels." (*Ib.* Specication 5th.)

d. "Suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the

United States for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States." (*Ib.* Specification 12th.)

e. "Suits to recover pecuniary forfeitures under any act to enforce the right of citizens of the United States to vote in the several States." (*Ib.* Specification 15th.)

f. "Suits authorized by law to be brought by any person to redress the deprivation under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (*Ib.* Specification 16th.)

g. "Suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section 1980, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act." (*Ib.* Specification 18th.)

h. "Suits and proceedings arising under section 5344, Title, 'Crimes,' for the punishment of officers and owners of vessels, through whose negligence or misconduct the life of any person is destroyed." (*Ib.* Specification 19th.)

i. "Suits to prevent and restrain violations of the act to protect trade and commerce." (Supplement of the Rev. State., Vol. 1, 2d ed., page 763, section 4.)

j. "Suits by persons injured by violations of the act." (*Ib.* Section 7.)

k. "Suits by persons injured for the violation by a common carrier of the Interstate Commerce law." (*Ib.* p. 530, section 8.)

l. "Suits by the Interstate Commerce Commission against common carriers refusing to obey any lawful order of the commission. (*Ib.* p. 688, section 16.)

m. "Suits * * * in which controversy the United States are plaintiffs or petitioners." (Judiciary Act of August 13, 1888, *Ib.* 611.)

n. "Between citizens of the same state claiming lands under grants of different states." (*Ib.*)

In each and every of the foregoing cases a right of appeal or writ of error to the Supreme Court of the United States is denied under section 5, of the Evarts act, unless a constitutional question should arise in the course of the litigation; and under section 6 a right of appeal is given in the first instance to the Circuit Court of Appeals, and the decision of the Circuit Court of Appeals in such cases is not made final, and the language of the first sentence in the last paragraph of section 6 is, by its express terms, applicable to each of these cases and cannot, without doing violence to the language used, apply to cases other than these or similar cases. We submit, therefore, that this sentence is intended to provide and does provide for a right of appeal to the Supreme Court from the final decree or judgment of the Circuit Court of Appeals in all cases of which the Circuit Court of Appeals has

appellate jurisdiction, unless by the language in the first paragraph of section 6 the decision of the Circuit Court of Appeals is made final.

If we are correct in this position the contention here is at an end. The language of the last sentence in the last paragraph of section 6 applies in terms to the appeal authorized by the first sentence in the last paragraph:

"But no *such* appeal shall be taken;" etc.

"Such appeal" means the appeal taken under the first sentence of the last paragraph. That is the appeal in all cases where there has been a decree in the Circuit Court of Appeals in the cases where its judgment is not made final.

Mr. Desty, in his 8th Ed. of Federal Procedure, Vol. 2, page 879, section 541, gives section 1008 of the Revised Statutes, giving the time for the taking of an appeal from the decree of the Circuit Court as two years, as being still in force; and Mr. Foster, in section 483, page 1036, Vol. 2, of his Federal Practice, says, with respect to the language under consideration:

"It seems that this limitation applies only to writs of error to and appeals from the decisions of the Circuit Court of Appeals."

and at page 1037 he says:

"No judgment, decree or order of a Circuit or District Court, or a State Court in any action at law or in equity, can be reviewed by the Supreme Court, unless the writ of error is brought or the appeal taken within two years after the entry of such judgment, decree, or order."

Section 1008 provides that an appeal may be taken from the judgment, decree or order of a Circuit or District Court within two years. Section 1003 provides that:

"Writs of error from the Supreme Court to a State Court in cases authorized by law shall be issued in the same manner and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States."

There is no provision other than that contained in section 1008 as to the time within which a writ of error may be taken to a state court from the Supreme Court; and under this section it is clear, we think, that a writ of error may be taken within two years, that is, section 1003 and 1008 should be construed together.

The last paragraph of section 5, in the act of March 3, 1891, provides:

"Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a state, nor the construction of the statute providing for review of such cases."

If, therefore, prior to the passage of the act of March 3, 1891, a writ of error could be issued from the Supreme Court of the United States to the court of a State to review its decision within two years this right is still preserved intact by the act of March 3, 1891, and if the contention of the appellees is correct, we should have the anomalous condition that where constitutional questions arise in the Supreme Court of a

State, the party desiring to appeal might do so within two years; but if they arise within the circuit or district courts the appeal must be taken within one year. We insist that no such construction should be placed upon the act of 1891, unless the language is so clear that such construction could not be avoided. Construed, as we insist it should be construed, the act as a whole is harmonious, consistent and sensible, namely: under section 11, appeals from circuit or district courts to the Circuit Court of Appeals must be taken within six months; under section 6, appeals from the Circuit Court of Appeals to the Supreme Court must be taken within a year; and under section 1003 and 1008 of the Revised Statutes, appeals or writs of error to Circuit or District Courts of the United States or the courts of a State from the Supreme Court of the United States must be taken within two years.

The appellants in this case represent and collect taxes not only for the county of which they are officers, but also for the State. Except in the few instances of license fees the State of Indiana is dependent for its revenue upon the ad valorem taxes levied and collected by local officers under general laws, and accounted for and paid over at stated periods to the State officials. The State claims that its system of taxation with respect to the contention made in this case is in harmony and in accordance with the requirements of the constitution of the United States. This contention has been decided adversely to it by one of the District Judges of the United States Court. It asked relief from that decision at the hands of the

Circuit Court of Appeals, and the door was very promptly shut in its face. It now comes to this court, where the question can be directly presented and conclusively determined, and is met at the threshold with the objection that its appeal is not timely.

We submit that it is within the express letter and spirit of the statute and that the doors of this court should not be closed to us, and that, therefore, the motion to dismiss should be denied.

Respectfully submitted.

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No. 30.

Br. of Taylor, Richards & Moores

for Appts

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct. 5, 1899.

STERLING R. HOLT, JOEL A. BAKER, THOMAS TAGGART, GEORGE WOLF, WILLIAM A. BELL, AND CHARLES H. STUCKMEYER, *Appellants*,
v.
THE INDIANA MANUFACTURING COMPANY.

Term No. 30.

BRIEF FOR THE APPELLANTS.

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In the Supreme Court of the United States.

OCTOBER TERM, 189.

STERLING R. HOLT, JOEL A. BAKER, THOMAS TAGGART, GEORGE WOLF, WILLIAM A. BELL AND CHARLES H. STUCKMEYER, *Appellants*,

v.

THE INDIANA MANUFACTURING COMPANY.

No. 30.

APPELLANT'S BRIEF.

STATEMENT.

This suit was brought in the Circuit Court of the United States for the District of Indiana, on July 13, 1894, to enjoin the appellants from collecting from the appellee certain taxes for the years 1892, 1893 and 1894, assessed against it, and entered upon the duplicates in the treasurer's office of Marion county, Indiana. Afterwards, on August 10, 1895, a supplemental bill praying for injunction, was filed by appellee against appellants, to restrain them from collecting certain taxes for 1895, then likewise assessed and entered against appellee.

The appellee is a manufacturing company, organized pursuant to the laws of the state of Indiana, and doing business in the city of Indianapolis.

The appellant Sterling R. Holt, was treasurer, Joel A. Baker, assessor, and Thomas Taggart, auditor of the county of Marion, state of Indiana; George Wolfe was assessor of Center township, Marion county, Indiana; and said officers, together with the appellants, William A. Bell and Charles H. Stuckmeyer, constituted the board of review of Marion county, Indiana, and all were citizens of Indiana, resident in Indianapolis.

The injunction was prayed on the ground that the levy and assessment was void and in contravention of the constitution and laws of the United States, in that it was an attempt to levy a tax upon certain patent rights held by the company.

THE PROCEEDINGS.

After being put at issue, the case was submitted to the circuit court upon the supplemental bill, answers thereto, and the stipulations and evidence set forth in the record.

Judge Baker sustained the bill and granted a perpetual injunction, restraining the appellants from collecting the taxes then entered upon the tax duplicates in the custody of the defendants.

(Record, pp. 16 and 17.)

An appeal was taken to the circuit court of appeals (Judges Woods, Jenkins and Showalter). That court refused to entertain jurisdiction, and held that the proper remedy was by appeal to this court.

(Holt v. Indiana Mfg. Co., 80 Fed. Rep., p. 1.)

Thereupon an appeal was prayed to this court.

After the appeal had been perfected, the appellee filed its motion to dismiss this appeal for want of jurisdiction of the case. This motion was overruled.

THE PLEADINGS.

The Petition. (*Rec., pp. 2-9.*)

The petition charges:

(a) That at the time for assessing the taxes for 1892, the complainant owned tangible property and assets to the amount of $5,000, and that it made due return thereof for taxation; that its treasurer, Joseph K. Sharpe, Jr., appeared before the board of review of Marion county, Indiana, composed of said appellants, and such treasurer's evidence before such board corresponded with the return made by appellee.

(b) That such evidence showed complainant was possessed of certain patents then estimated to be worth $15,000; that the then board of review, composed of said Taggart, Baker and Victor M. Backus, did "inequitably, wrongfully, unlawfully and in-

juriously fix the assessment" of appellee's property, because of appellee's ownership of said letters patent, at $20,000, or $15,000 more than appellee was justly assessable for, in violation of the constitution and laws of the United States, by virtue of which the said letters patent were held by appellee.

(c) Appellee paid as taxes for the said year 1892, $95 to said Holt, as treasurer, which appellee alleges were in full of all taxes that were justly chargeable for that year upon its property, except as to the said letters patent. Notwithstanding this, the said treasurer is demanding $284.94 as unpaid taxes for the year 1892, and that such demand is upon the assessment of said letters patent; and he is threatening to seize the property of appellee to pay the same.

(d) That in 1893 appellee was possessed of $8,900 of taxable property, which it returned; that the said assessor demanded that the number and value of the letters patent owned by appellee should be placed on the assessment list, which was done, for the purpose of furnishing the assessor the information he desired; and, thereupon, the assessment list was made to show that appellee was possessed of four letters patent of the United States, of the value of $25,000; that the board of review, composed of said Baker, Taggart and Backus, wrongfully assessed appellee's property for 1893, because of its ownership of said letters patent, at the sum of $36,000, or $27,100 more than appellee was properly assessable for; that appellee paid $204.55 taxes, which were in full of all that

were chargeable to it for the year 1893, and in full of all its property, excepting said letters patent; that said Holt, as treasurer, demands a further sum of $496.94 as unpaid taxes for said year 1893, basing said demand upon a valuation of said letters patent; and is threatening to seize appellee's property to pay the same.

(e) That for the year 1894 appellee was possessed of $7,645 of tangible property, which it returned for taxation; that pursuant to demand of the assessor, appellee furnished its assessment list, and said assessment list was made to show that appellee was possessed of said four letters patent of the value of $25,000. By the furnishing of such list, however, appellee alleges that it did not thereby agree to the legality of assessing letters patent for taxation; that appellee, by its attorneys, and officers, appeared before the board of review of Marion county, and protested against any assessment for taxation, except upon its actual tangible property; that the board of review "inequitably, wrongfully and injuriously" fixed the assessment of appellee's property, because of its ownership of said letters patent, at the sum of $36,000, or $28,355 more than it possessed in tangible property.

(f) That appellee had paid all the taxes it claimed to be justly due for the years 1892 and 1893, and that the taxes for the year 1894 were not then due; that at the time of paying the taxes for the years 1892 and 1893, appellee protested against the said assessments and made the payments as for the full amount prop-

erly chargeable, and that on July 11, 1894, at a meeting of the said board of review, appellee filed a motion to abate the "unlawful, inequitable, unjust and wrongful taxes" which had been assessed against it; which motion was denied.

(g) That appellee obtained a copy of the statement of taxes for 1892; also proceedings of the board of review for that year; also copy of tax statement for 1893, and copy of assessment list for 1893, as well as of the proceedings of the board of review for that year; also copy of tax statement for 1894, and assessment list for 1894, as well as of the board of review for that year; which copies were produced.

(h) "That the defendant, Sterling R. Holt, is the treasurer of Marion county, Indiana, whose duty as such treasurer, under the laws of the state of Indiana, it is, to receive and collect taxes for the said state of Indiana, and also for Marion county, in said state, and also for the city of Indianapolis, within said county;" that a large portion of the taxes received by said treasurer are on account of the state of Indiana, a sovereign state, and, under the constitution and laws, no suit can be maintained against such state; that it is the duty of such treasurer to pay into the treasury of the said state of Indiana a large portion of the amount so received, and that such moneys will become mixed with the moneys of the state, and thus be beyond the reach of any process of this court, and irrecoverable, and that a great and irreparable injury will result, unless such collection is prevented.

(i) That a much larger sum than the amounts so paid for the years 1892 and 1893 have been pretended to be assessed upon the appellee's assets, by reason of the inclusion therein of letters patent of the United States, and that said taxes have been extended upon the tax duplicate of Marion county, Indiana; which duplicates are in the hands of said defendant, Holt, as such county treasurer; that said taxes are so extended as delinquent taxes against appellee's property "under the provisions of the statute of the state of Indiana," and that appellants are threatening to and will levy upon the property of appellee and sell same to satisfy such delinquent taxes if not enjoined from so doing. All to the great and irreparable injury of appellee.

(j) That the said Holt, as treasurer, was asserting the right to enforce the payment of all the taxes so extended upon the duplicates for the years 1892 and 1893, including said letters patent, as made by the said board of review, and would do so unless enjoined, and would collect said taxes by sale of appellee's property.

(k) That such taxes constitute a cloud upon the title to the property of appellee, and that a court of equity has power to remove same.

(l) That appellee is "engaged in the business of manufacturing, and that its tangible property consists almost wholly of machinery, tools and materials used in carrying on its said business of manufacturing, and which are necessary thereto;" that if its property

should be seized and sold for taxes, as aforesaid, its business will be destroyed and ruined, and great and irreparable damage will result.

(m) That "it is a suit to redress the deprivation, under color of the law of the state of Indiana, of a right secured by the constitution and laws of the United States, and, further, that it is a suit arising under the patent laws of the United States."

(n) Appellee prayed for a writ of injunction, perpetually enjoining and restraining appellants, individually and as officers, and as a board of review, from "collecting, or in any manner attempting to collect, the said amount claimed as taxes as aforesaid, and entered upon the tax duplicates in the custody of said defendants or either of them, or any other amount which may be claimed to be due on account of the value of the said, or any, patents owned by your orator," and praying for a temporary injunction restraining the defendants from seizing or selling any of the property of appellee; also praying it be decreed that the assessment and valuation for taxation of the letters patent of appellee "made directly or indirectly by said assessors and board of review, is inequitable, unjust, unlawful and wholly void."

The Demurrer. (*Rec., p. 10.*)

On September 7, 1894, the appellants filed their joint and several demurrer to said bill, and for cause of demurrer said that said bill did not state a case that

entitles appellee in a court of equity to any discovery from any of the defendants, or to any relief against them, or either of them, as to any matter stated in said bill. Which demurrer on March 12, 1895, was overruled.

The Answer. (*Rec., pp. 11 and 12.*)

On March 30, 1895, appellants filed their answer. This answer states—

First. Appellants admit that the board of review of Marion county, Indiana, in the course of its business, in the assessment of the various corporations of said county, did assess the property of appellee at the amounts named in the complainant's bill of complaint, to wit:

For the year 1892.....	$20,000 00
For the year 1893.....	36,000 00
For the year 1894.....	36,000 00

Second. "That the plaintiff is a corporation doing a lucrative manufacturing business, which was well established and widely known, with a large amount of tangible property, and a valuable franchise exclusive of patent rights."

Third. "That the market value of the stock of plaintiff at the time for making the assessment for the year 1894 was $360,000, as defendants are informed and believe, and that the value of said stock at the time for making the assessments for the years 1892

and 1893, was at least $180,000, as defendants are informed and believe."

Fourth. That the said "board of review in making said assessments for the years 1892, 1893 and 1894, the patents, if any plaintiff had, were in no way or manner included or considered, and that said board, in making said assessments, considered only the legally taxable property of plaintiff, and no other."

Fifth. That defendants deny all manner of unlawful combination and confederacy, etc., and ask to be dismissed with their costs.

This answer was sworn to by each and all of the then defendants, they being all of the county board of review as then constituted, who made the original assessments for the years 1892, 1893 and 1894, of all domestic corporations in the county of Marion, including appellee.

Replication. (*Rec., p. 12.*)

On the 13th day of April, 1895, complainant filed its replication in the general form.

Supplemental Bill. (*Rec., pp. 13-15.*)

On August 10, 1895, complainant filed its supplemental bill to cover the taxes assessed for that year. The said bill charges—

(o) That since the filing of the original bill, the statutes of Indiana relating to the subject of county

boards of review have been amended so as to increase the number of members thereof; such new board consisting of the said Holt, Baker and Taggart, original defendants, and William A. Bell and Charles H. Stuckmeyer, as newly appointed members, and the petition asks that said Bell and Stuckmeyer be made parties defendant.

(p) That at the time of assessing the taxes for the year 1895, complainant was possessed of tangible property to the amount of $10,137, and returned the same for taxation upon the regular blank statements for taxation furnished by the tax assessor; that the tax assessor demanded of complainant the number and value of the letters patent owned by it, which complainant refused to furnish, but, instead thereof, wrote on the assessment list the following: "We are advised that patent rights are not taxable and therefore decline to state any valuation for them;" that the assessor thereafter made and attached to said assessment list a statement saying: "No. 30, returned by deputy assessor in 1894. No. Patent rights and value, 4, $25,000. John W. McDonald.' That said McDonald was the chief deputy of the township assessor.

(q) That complainant denied the legality of any assessment for taxation based upon any letters patent owned by it; that pursuant to summons it appeared by its officers and attorney before the board of review of Marion county, on June 19, 1895, and showed that it was possessed of no other assessable property than appeared on its assessment list, and that whatever

value the stock of said company might possess, it possessed solely by reason of its ownership of letters patent of the United States, and that except for such ownership such stock would have no value whatever, and that said stock was all issued in payment of such letters patent; notwithstanding which the said board of review "inequitably, wrongfully, unlawfully and injuriously fixed the assessment of complaint's property, because of such ownership of letters patent," and because of the value of the stock derived and resulting from such ownership of letters patent at the sum of $36,000, or $25,863 more than was possessed by the complainant in tangible property. All in violation of the constitution and laws of the United States.

(r) That all the taxes justly due from complainant had been paid as appears by tax receipts, and that at the time of paying such taxes it solemnly and formally protested against the unjust, inequitable, unlawful and wrongful assessment complained of, and that such payment was in full amount of all taxes lawfully charged against it.

(s) Complainant asks for the relief prayed in the original bill, and such further relief as is made by this supplemental bill.

The supplemental bill was not verified.

Stipulation. (*Rec., p. 15.*)

It was stipulated that the complainant might file the aforesaid supplemental bill, and that the answer and replication heretofore filed should have the same force and effect as if filed subsequent to the date of the filing of said supplemental bill, and that no other answer or replication need be filed.

Stipulation No. 2. (*Rec., p. 15.*)

On December 2, 1895, it was stipulated that the defendant waive the taking of any testimony, and rest upon the pleadings and evidence introduced and filed. Defendants waive any objection to the copies of tax statements, assessment lists, and proceedings of the board of review, which might be based on the fact that they, or any of them, are not certified, or that they or any of them were introduced before the filing of the supplemental bill. Defendants, however, do not waive other objections made and entered of record. Complainant gives notice that it will produce and use at the hearing the statutes of the state of Indiana bearing upon the question of the taxation of patents or patent rights.

Decree. (*Rec., pp. 16 and 17.*)

The decree sustained the bill and found that the laws of Indiana, requiring the taxation of patent rights, are unconstitutional and void, and that the

taxes assessed against the capital stock of the complainant was an indirect assessment for taxation of patent rights held by the appellee, thereby creating a cloud upon the title of complainant's corporate property, and a perpetual injunction was issued, enjoining all of the defendants and all persons acting through or under them, from collecting or attempting to collect the amounts claimed as taxes, and entered upon the tax duplicates in the custody of the defendants. An appeal was prayed and taken to the United States court of appeals, as before stated in this brief; which refused to take jurisdiction thereof, for the reason that this was not a suit to prevent taxation arising under the patent laws of the United States. An appeal was thereafter prayed directly to this court.

Assignment of Errors. (*Rec., p. 17.*)

Appellants assigned six errors:

First. The bill did not state sufficient facts.

Second. The court erred in overruling the demurrer to the bill.

Third. The decree was erroneous in finding that the taxes assessed by appellants in their official capacity against appellee on account of the valuation of its capital stock was an indirect tax on the patent rights held by appellee.

Fourth. The decree was erroneous in finding that the assessment against appellee's corporate property was wrongful, inequitable, unlawful and void.

Fifth. The decree was erroneous in directing the removal of the assessments against appellee's property.

Sixth. The decree was erroneous in directing a perpetual injunction against appellants from collecting any of the taxes entered upon the duplicate against appellee.

ARGUMENT.

The six errors assigned may be summarized in three propositions:

First. The bill did not show that the appellee was entitled to relief in a court of equity.

Second. The evidence sustained the assessment made by appellants upon appellee's property, and, likewise sustained appellee's answer that the letters patent held by appellee were not taxed.

Third. The value of patent rights owned by a manufacturing company can not be deducted from the aggregate assessment made against the shares of capital stock of such company.

First. The bill did not show that the appellee was entitled to relief in a court of equity.

A court of equity will not grant relief by injunction where a plain and adequate remedy at law or statute exists.

Pittsburgh, etc., Ry. v. Board of Public Works, 172 U. S., p. 32.

This proposition is so thoroughly discussed in the above case, and the cases cited therein, that the citation of other authorities is unnecessary. On page 37 this court lays down the fundamental proposition above stated, as follows:

> "The collection of taxes assessed under the authority of a state is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction. Dows v. Chicago, 11 Wall. 108; Hannewinkle v. Georgetown, 15 Wall. 547; State Railroad Tax Cases, 92 U. S. 575; Union Pacific Railway v. Cheyenne, 113 U. S. 516; Milwaukee v. Koeffler, 116 U. S. 219; Shelton v. Platt, 139 U. S. 591."

The above case lays down three propositions: First, that the tax must be illegal; second, that the owner of the property has no adequate remedy by the ordinary processes of the law; and third, there must be special circumstances bringing the case under some recognized head of equity jurisdiction.

These three elements must concur before a federal court will enjoin a state officer from collecting assessments that are properly made pursuant to law.

It will be observed that there is no pretense that the assessment against appellee was not regularly made at

the proper time, by the lawfully constituted authorities, strictly pursuant to the laws of the state of Indiana.

This is essentially a case of excessive taxation. It is true plaintiff uses certain adjectives, such as "inequitable," "unjust," "unlawful," "wrongful" and "void:" but the essence of the bill is one of excessive assessment.

The reasons why a federal court of equity will not stay the hand of state officers in the collection of taxes, except where all of the three above conditions concur, are so well stated by this court, in the Dows case, 11 Wall. 108, in an opinion rendered by Justice Field, that we quote the passage from pages 109 and 110:

> "Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceed-

> ings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.
>
> "No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked."

The above case was one where shares of stock in a national bank had been assessed by the taxing officers of the city of Chicago.

Five years later, this court, in the State Railroad Tax cases, 92 U. S. 575, again reconsidered all of the cases upon this subject, to that date. The evils flowing from the ready issuance of injunctions by the federal courts, restraining state officers from collecting taxes, were pointed out in an opinion rendered by Justice Miller, on page 613:

> "We propose to consider these questions for a moment, because the immense weight of taxation rendered necessary by the debts of the United States, of the several states, and of the counties, cities and towns, has resulted very naturally in a resort to every possible expedient to evade its force.

"It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity." (Citing authorities.)

"The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid.

"That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. Stat. sect. 3224. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice."

The above was a case of assessments against railway property, wherein it was charged that the taxes assessed were excessive, illegal and void.

Judge Cooley, in his work on taxation, page 772, entirely supports the above views in these words:

> "When a tax as assessed is only a personal charge against the party taxed, or against his personal property, it is difficult in most cases to suggest any ground of equitable jurisdiction. Presumptively the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous. The exceptions to this rule, if any, must be of cases which are to be classed under the head of irreparable injury."

Thus the law has come to be that the presumptions are in favor of the adequacy of the law to furnish a complete remedy for illegal or void assessments. These presumptions must be overthrown by positive testimony. The allegation of irreparable injury is easy to make.

What is "irreparable injury?"

This question is answered by this court in the case of Shelton v. Platt, 139 U. S., p. 591. That was a

case where express company property in Tennessee, it was charged, was about to be seized by the sheriff for taxes, which would greatly embarrass the company in the conduct of its business, and subject it to a heavy loss and damage, and the public served by it, to a great loss and inconvenience.

On page 596, the court, after quoting the irreparable injury clause in the bill, declare, speaking through Chief Justice Fuller:

> "The trespass involved in the levy of the distress warrants was not shown to be continuous, destructive, inflictive of injury incapable of being measured in money, or committed by irresponsible persons. So far as appeared, complete compensation for the resulting injury could have been had by recovery of damages in an action at law. There was no allegation of inability on the part of the express company to pay the amount of the taxes claimed, nor any averments showing that the seizure and sale of the particular property which might be levied on, would subject it to loss, damage and inconvenience which would be in their nature irremediable."

It might be said, with some reason, that the seizure of the property of express companies might interfere with their business and the public business. But in the case at bar there was no reason, either public or private, that would warrant the injunctive hand of the court being laid upon the local taxing officers. There was no pretense that the appellee did not have funds with which to pay the taxes; that the taxes were ir-

regularly assessed; or that there was fraud in the assessment.

This court, in the Shelton case, supra, in speaking of the legislation of congress prohibiting enjoining of federal taxes, on page 597, used this pertinent language:

> "Legislation of this character has been called for by the embarrassments resulting from the improvident employment of the writ of injunction in arresting the collection of the public revenue; and, even in its absence, the strong arm of the Court of Chancery ought not to be interposed in that direction except where resort to that court is grounded upon the settled principles which govern its jurisdiction."

COMPLAINANT HAD AN ADEQUATE REMEDY AT LAW.

Complainant was not entitled to relief in a court of equity in this case, for the reason that there was a plain, adequate remedy at law. That remedy, complainant did not pursue.

What was the remedy pointed out by the statute of Indiana?

Section 1 of article X of the Indiana constitution reads as follows:

> "The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as

shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law."

Section 48 of the tax law of 1891, being §8458, R. S. 1894, reads as follows:

"On the first day of April of each year, or as soon thereafter as practicable, and before the first day of June, the assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose, and thereupon such person shall make to such assessor a full and correct description of all the personal property, of which such person was the owner on the first day of April of the current year, and such person shall also, at the same time, make separate, full and true statements in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity, and he shall fix what he deems the true cash value thereof to each item of property for the guidance of such assessor, who shall determine and settle the value of each item, after examination of such statement, and also an examination under oath of the party or of any other person, if he deems it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the

> market or selling price at the place where the property shall be at the time of its liability to assessment, and if there is no market value, then the actual value. In making the valuation, annuities and royalties shall be valued at their present cash value. For the purpose of making such statements, the person to be assessed shall receive the proper blanks from the assessor."

The above section provides for the listing of personal property generally throughout the state.

Section 53 of the Indiana tax law of 1891, being section 8463, R. S. 1894, contains a form of schedule for such property, copies of which are set out in the record. (See Rec., p. 37.)

All domestic corporations are assessed in Indiana pursuant to statutes specially governing same. All of the hundreds of domestic corporations in Indiana, including appellee, are assessed under the same statutes by similar boards.

Section 12 of the Indiana tax law, being §8422, R. S. 1894, governing the assessment of domestic corporation, reads as follows:

> "All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this state is situated shall be deemed its residence, but if there be no principal office in the state, then such property shall be listed and taxed at any place in the state where the corporation transacts business."

Section 25 of the tax law, being §8435, R. S. 1894, provides for the taxation of franchises, and is as follows:

> "Every franchise granted by any law of this state, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property."

Section 73 of the tax law of 1891, being §8491, R. S. 1894, provides how all domestic corporations are required to make return of their property for taxation. This applies to all domestic corporations in Indiana, and reads as follows:

> "Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this state (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:
>
> "First. The name and location of the company or association.
>
> "Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.
>
> "Third. The amount of capital stock paid up.

"Fourth. The market value, or if no market value, then the actual value of the shares of stock.

"Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

"Sixth. The value of all tangible property.

"Seventh. The difference in value between all tangible property and the capital stock.

"Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

"Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first day of June to be sued and recovered in any proper form of action in the name of the state of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action."

It was upon this statute and pursuant to its form that the appellee made its return for the years 1892 (Rec., pp. 31-33), 1893 (Rec., pp. 34-36), 1894 (Rec., pp. 58-60), 1895 (Rec., pp. 51-53).

When these sworn statements of corporations are made, as is shown in this record, they are handed to the county auditor, and by him turned over to the

county board of review, composed of the officers shown heretofore in this brief. This board of review thereupon takes these lists and makes the original assessment against all domestic corporations in Indiana.

The law governing these assessments by the county board of review is set forth in section 74 of the tax law of 1891, being §8492, R. S. 1894, as follows:

> "Such statement shall be scheduled by the assessor, and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock, or any part thereof, is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that is so invested. Every franchise or privilege of any such corpora-

> tion shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed."

The court will observe that this board of review values all capital stock, all franchises and all privileges of domestic companies in Indiana.

The court will further observe that the above section clearly defines exactly how domestic corporations shall be assessed in Indiana. We will discuss this section further along in the brief when we take up the evidence.

Our purpose now is to simply show the method by which taxes are assessed and the remedies for illegal or void assessments.

Section 114 of the tax law of 1891, being §8532, R. S. 1894, provides for the organization, duties and powers of the county board of review. It met annually on the first Monday after the fourth day of July until amended by an act of 1895 which fixes the time at the third Monday in June. Two weeks' previous notice of its meeting is given by the county auditor.

After the county board of review has made such original assessment against a domestic corporation, if such corporation feels aggrieved, it is its duty to appeal to the state board of tax commissioners. This appeal is provided for by statute.

Section 125 of the tax law of 1891, being §8543, R. S. 1894, reads as follows:

> "Appeals shall lie from the decision of any county board of review to the state board of tax commissioners, which shall hear and determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor: Provided, That all such appeals shall be allowed within such time and under such restrictions as may be prescribed by the state board of tax commissioners; but the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board and upon such conditions as it may prescribe."

This section was amended in 1895, so that the amended section was in force when the assessment for 1895 was made against the appellee. The amended section reads as follows:

> "Any person, partnership, company, association or corporation dissatisfied with the action of the county board of review, upon any original assessment or upon any application to increase or decrease the assessment made by any township or county assessor, or upon any order for the assessment of hidden or omitted property, shall have the right to appeal from the order or assessment of the county board of review to the state board of tax commissioners; and in like manner any township or county assessor, or any member of the county board of review, or any taxpayer or taxpayers of the county shall have the right to appeal to the state board of tax commissioners

from any original assessment, made by said county board of review, and from any order of the county board of review increasing or decreasing any assessment, or refusing to increase the same, or to assess hidden or omitted property, upon giving notice of such appeal within five days after the adjournment of the county board of review, to the county auditor of the county from which said appeal is to be taken. Upon receiving notice of such appeal, the auditor of such county shall forthwith make out a statement, in writing, showing concisely the substance of the complaint made, if any, and the action of the board thereon, and shall transmit the same by mail to the auditor of state, who shall lay the same, for its action, before the state board of tax commissioners when it shall convene: Provided, That such state board of tax commissioners may make such regulations in regard to the taking of appeals, not inconsistent herewith, as they may deem necessary to protect the rights of the parties questioning their assessments. Such state board of tax commissioners shall, upon appeal from an assessment by the party aggrieved, assess the property in controversy. The auditor of state shall certify to the auditors of the several counties all such changes made by said state board of tax commissioners, showing in the first column the assessment made by the county or township officials, and in the second column the assessment as made by the said state board of tax commissioners, which latter amounts shall be by said auditor extended on the tax duplicates in lieu of the amounts fixed by said township or county officials, or by said county board of review: Provided, further, That it shall not be

necessary for said auditor of state to issue separate notices of certificates with reference to each person affected, but he may include all persons affected in any one county in one or more notices and certificates: Provided, further, That the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board, and upon such conditions as it may prescribe."

Acts of 1895, p. 79.

These above quoted sections of the Indiana tax law constitute a complete remedy by appeal. The appellee did not avail itself of that remedy. Instead of appealing from any of these assessments, it waited for more than a year after the taxes of 1892 were due before paying any part of the taxes for that year. It appeared before the county board of review in 1892, and its secretary testified affirming the truth of its statement. (See Rec., p. 34.) There was no protest or objection to the assessment filed or made by any of the officers of the company that year.

For 1893 no one appeared for the company to protest or object to the assessment so fixed by the county board of review at exactly the market value of the stock sworn to by the secretary. (See Rec., p. 42.)

For 1894 the company appeared before the county board of review and testified, and on page 3 of the printed stipulation as to omitted evidence covering the proceedings before the board of review of that year, this colloquy ensues between Mr. Holt, treasurer, and Mr. Bradford, the attorney for the appellee.

"Mr. Holt: 'The way to do is to appeal from this board.'

"Mr. Bradford: 'We have other appeals. I think, perhaps, this being a federal question, I will file a suit in the United States Court.'"

Here the appellee was notified of the appeal, but he promptly notified the board that his appeal would be to the federal court.

It is not only the privilege of any person feeling aggrieved at the assessment of a county board of review in Indiana to appeal to the state board of tax commissioners. The taxpayer can not sue for the recovery of money, nor can he enjoin the collection of taxes until he has pursued the statutory remedy provided for such cases.

This question is conclusively settled in the case of Senour v. Matchett, 140 Ind. 636. In this case the county board of review had added to the appellee's tax list, $10,000 against "greenbacks" held by Matchett on the first day of April. "Greenbacks," at that time, 1892, were not taxable. Matchett did not appeal from the assessment by the county board of review to the state board of tax commissioners, as he should have done. Matchett averred that he had no notice that the board of review was attempting to increase his assessment, and he had no remedy at law; that the state board of tax commissioners had not made any rules or regulations governing appeals from the county board of review; and as a matter of fact, that he did not own any "greenbacks" on April first, 1892, the date of his assessment.

He thereupon attempted to enjoin the treasurer of Marshall county from collecting these taxes. The supreme court of Indiana, after quoting the law governing appeals, and although the assessment of "greenbacks" was utterly void, on page 639, say:

> "Notwithstanding this fact, no steps were taken by him to prosecute an appeal to the state board of tax commissioners, but he abided his time until his taxes became due, and then refused to pay those accruing upon the amount added to his list by the board of review, and commenced this action for injunctive relief."

Further along, on the subject of collateral attack against the assessment made by the county board of review, on page 639, the court say:

> "While it is true that the board had no right, under the law then existing, to add legal tender notes held in a bone fide manner by appellee, still it was within its province to determine whether he had temporarily converted his taxable money into these notes for the express purpose of evading the payment of taxes thereon; and if it made a mistake, or reached a wrong conclusion, it can not be held, upon a collateral attack, that its action or decision therein was void, and if he was guilty of such a conversion, a court of equity will not interfere. Ogden, Treas., v. Walker, 59 Ind. 460.
>
> "In this tribunal, which possess quasi judicial powers, is lodged, by law, exclusive original jurisdiction over the subject-matter of revising and correcting tax assessments. And when it once obtains jurisdiction over the person by virtue of

notice provided by the statute, or upon appearance of the taxpayer, whose list is called in question, its action or decision in the matter, right or wrong, is binding upon him until set aside or vacated by an appeal or some other direct authorized proceeding. See Jones, Treas., etc., v. Cullen, 40 N. E. Rep. 124, and cases therein cited; Jones, Treas., v. Rushville Natural Gas Co., 135 Ind. 595.

Then taking up the direct question here presented, namely, the right to enjoin the treasurer from collecting taxes on erroneous assessments, the court say, on page 640:

"The legislature having created a board of review in each county, and likewise a state board of tax commissioners, and clothed each with certain appropriate powers and duties, and provided for an appeal from the former to the latter, a person aggrieved by reason of the errors or irregularities that may enter into the decisions or orders of the board of review, and which may render the same voidable, but not void, must invoke the remedy provided by appeal, and will not be permitted to assail the same in a court of equity. In this there is no hardship, for it must be presumed that the appellate tribunal, as is enjoined upon it by law, will give the appealing party a fair hearing and administer equal justice to all; neither permitting property liable to taxation to escape the burden thereof, nor impose upon the citizen an obligation to pay a tax upon property or means that he does not own, or which, if he does, are exempt from taxation by virtue of law.

"The contention of appellee that he could not

> appeal for the reason that the state board of tax commissioners had not made and provided the necessary rules and regulations relative to appeals to that body, is without merit. The law granted him an appeal as a matter of right; he failed to exercise it in any way, and the neglect of the state board to provide regulations and furnish blanks is not an available excuse for his failure to demand an appeal."

This case, it seems to us, is conclusive against the right of appellee to injunctive relief.

> "Construction by the state courts of last resort of state constitutions and statutes will ordinarily be accepted by this court as controlling."
>
> Adams Express Co. v. Ohio, 165 U. S., p. 219.

The proposition laid down in the Matchett case, supra, in principle is entirely supported by this court in the Pittsburgh Railway case, 172 U. S. There the appellant, as here, failed to appeal from the decision of the board of public works to the circuit court; but, instead thereof, hastened to the federal court and prayed for an injunction. The court below justly denied the right, and this court affirmed the decision, using this language on page 48:

> "The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for the review of the assessment complained of, is not entitled to maintain this bill."

The same doctrine is supported by the following cases:

> Small, Receiver, v. City of Lawrenceburgh, 128 Ind., p. 231.

On page 234 this language appears:

> "The assessor was charged with the duty of fixing the value on the property (sections 3071 and 3072, R. S. 1881). And if the parties were aggrieved on account of being assessed with a greater amount than should have been charged against them, they had a remedy by appearing before the city board of equalization."

> Clement v. People, 177 Ill. 144.

The law of appeals from assessments in Illinois is similar to that of Indiana. The supreme court of Illinois, on page 144, say:

> "The charge of injustice and lack of uniformity with other assessments in the county need not be further noticed than to say section 86 of the revenue law affords a party so aggrieved the only remedy for the correction of an unjust or excessive valuation of his property for the purposes of taxation, unless it is shown to have been fraudulently made. We have repeatedly held that the courts have no power to revise an assessment merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property."

> Kinley Manufacturing Company v. Kochersperger, 174 Ill. 379.

Discussing this duty of appeal to the court from the decision of the court board, the supreme court of Illinois, refusing the injunction because the company had not pursued the remedy provided by statute, say, on page 381:

> "It is the duty of the county board to determine every case brought before it. * * * It is a familiar rule that where there is a complete remedy at law, equity will not interfere."

It was the duty, then, of appellee to have appealed to the state board of tax commissioners from the action of the county board of review.

All officers are presumed to do their duty. The state board of tax commissioners, it must be presumed, would have done its duty under the law and under the oaths of its members. If there had been an excessive assessment, the state board of tax commissioners would have reduced it. If there had been an illegal assessment, it must be presumed that the state board of tax commissioners would have corrected such errors.

The state board of tax commissioners is composed of the governor, who is chairman, the secretary of state, the auditor of state, and two persons, appointed by the governor, of different political parties. The two appointees are called commissioners. These five constitute the board. They convene on the second Monday of July of each year at Indianapolis, and assess railroad property, rolling stock, telegraph, palace car, dining car, etc., companies, and hear appeals from county boards of review. The evidence is all heard and the hearing is entirely de novo.

The appellee, not having appealed, the presumption is that the assessment made by the county board of review is correct. This presumption runs all the way through this case.

Senour, Treas., v. Matchett, supra.

In Jones, Treasurer, v. Gas Company, 135 Ind. 595, in reversing the trial court because it granted an injunction against the treasurer restraining him from collecting the taxes fixed by the county board of review on the gas company, the supreme court of Indiana, on page 598, use this language.

> "The board of equalization not only has the power to assess the capital stock of a corporation where the value of such stock exceeds the value of the tangible property but it is its duty to do so. The board in such cases has exclusive original jurisdiction, and, while its action is not strictly judicial, it is at least quasi judicial and binds every one within its jurisdiction."

The court then proceeds to a discussion of the assessment of capital stock above the value of the tangible property, as returned by the company; and as that point was pressed by the appellee here, we quote the further language of the Indiana supreme court, from page 598, supra:

> "It is true that such board can not legally assess capital stock where the capital is invested in tangible property listed for taxation, unless such stock exceeds in value the property in which it is invested, but who shall determine the question

as to whether the stock is of greater value than the tangible property?

"The board of equalization, we think, must decide that question. If it makes a mistake and reaches a wrong conclusion, can it be said that its assessment is void? We think not. We think it is binding on the corporation assessed, until set aside or vacated by appeal, or some other authorized direct proceeding. It has always been the policy of the state to make the assessment and collection of taxes summary, and to hold now that a mere mistake or error of judgment in the officers charged with the duty of assessing and collecting taxes renders the tax void and subjects the officers to injunction proceedings, is to reverse this long settled policy."

Having thus, we trust, shown that the sole remedy of appellee was by appeal, let us proceed to the next step.

Having appealed, the presumption is that the state board of tax commissioners would have done their duty and corrected the errors and remitted all void assessments, if any there were. This is a presumption of law that necessarily arises.

REFUNDING OF TAXES.

If the state board should affirm the assessment made by the county board, what is the taxpayer's next remedy in Indiana?

The appellee should have paid the taxes assessed, and then filed a petition with the board of county com-

missioners for recovery of the amount illegally assessed. The taxes here enjoined are the state, county and city taxes.

(*a*) *State and County Taxes.*

The statute of Indiana provides for the refunding of these taxes—all of them. Section 1 of the tax law of 1853, being §7915, R. S. 1894, covers the refunding of all county taxes wrongfully assessed and collected, and makes it the duty of the board of county commissioners to repay same.

Section 2 of said act, being §7916, R. S. 1894, provides for the refunding of taxes paid into the state treasury, and provides that the auditor of state shall audit, and the treasurer of state shall pay same out of the state treasury. Said sections reads as follows:

> "Section 1. In all cases where any person or persons or body politic or corporate shall appear before the board of commisisoners of any county in this state, and establish, by proper proof, that such person or body politic or corporate has paid any amount of taxes which were wrongfully assessed against such person or body politic or corporate in such county, it shall be the duty of said board to order the amount, so proved to have been paid, to be refunded to said payer from the county treasury, so far as the same was assessed and paid for county taxes.
>
> "Sec. 2. In all cases where a portion of the amount so wrongfully assessed and paid shall have been for state purposes, and shall have been

> paid into the state treasury, it shall be the duty of the said board of commissioners to certify to the auditor of state the amount so proven to have been wrongfully paid, under the seal of said board of commissioners; and the auditor of state shall, thereupon, audit the same as a claim against the treasury, and the treasurer of state shall pay the same out of any moneys not otherwise appropriated."

If the county treasurer has already paid into the state treasury the proportion of money due the state, then the act of March 9, 1889, being §§1419-1425, R. S. 1894, affords an adequate remedy to the taxpayer.

So much of the first section of this statute as is in point reads as follows:

> "Any person or persons having or claiming to have a money demand against the state of Indiana, arising at law or in equity, express or implied, accruing within fifteen years from the time of the commencement of the action, may bring suit against the state therefor, in the superior court of Marion county, Indiana, by filing a complaint with the clerk of the said court, and procuring a summons to be issued by said clerk, which summons shall be served upon the attorney-general of Indiana, thirty days before the return day of the summons."

(*b*) *Refunding City Taxes.*

The latter part of section 59 of the act of March 7, 1873, being §3618, R. S. 1894, provides for the refunding of taxes erroneously assessed and collected

by cities. So much of said section as is applicable to this case reads as follows:

> "The common council shall then proceed to fix the amount and rate of tax to be levied on property and polls within such city, and the clerk shall have power, at any time, to correct erroneous assessments that shall be proven and made apparent to him, and the common council may, at any time, order the amount erroneously assessed against and collected from any taxpayer to be refunded to him."

The complaint correctly states that Holt, treasurer of Marion county, is by the statute also the treasurer for the city of Indianapolis; that he collects all the taxes due the state from the county of Marion; thus, he is the treasurer for the state of Indiana, the county of Marion and the city of Indianapolis in collecting all taxes and distributing them. He is thus the trustee and agent of all three governments in the collection of taxes.

We have shown above that there is an ample statutory remedy for collecting taxes already paid over to the state, county and city.

The methods above set forth for the collection of taxes, either illegally or fraudulently assessed, are methods that are provided for by statute, as construed by the supreme and appellate courts of Indiana. In other words, they are statutory remedies.

But independent of all statutes and their construction, the common law affords ample remedy for the collection of taxes illegally or fraudulently assessed.

This question has been fully passed upon by the appellate court of Indiana.

> Simonson v. Town, 5 Ind. App., p. 466;
> Dillon on Municipal Corp. 940.

There is no city treasurer for the city of Indianapolis. All of the money for the city of Indianapolis always remains in the hands of the county treasurer until it is expended. The office of city treasurer for the city of Indianapolis was long ago abolished, so that the county treasurer retains all of the money in his hands belonging both to the county of Marion and the city of Indianapolis until it is expended.

There is, however, a much shorter and more direct method than to wait until the money has been paid over by the county treasurer to the state, and that is the one appellee should have adopted, provided it had appealed and the state board of tax commissioners had not corrected its assessment. It is bound to use diligence and adopt the shortest and most convenient method of having refunded to it the taxes alleged to be illegally collected. This remedy is to file a petition before the board of county commissioners for the refunding of all illegal or void taxes paid to the county treasurer for the county and the state and city governments. This was a duty, and if appellee neglected it, it was guilty of laches, and can not now complain. This question is fully decided by the appellate court of Indiana in the case of Dubois v. Board of Commissioners of Lake county, 10 Ind. App. 347.

In that case Dubois claimed to have paid a considerable sum on account of taxes erroneously assessed and collected. Part of it was due the state, part the county and part the town of Crown Point. He filed a claim before the board of county commissioners, and, upon its being refused, he immediately brought a suit in the circuit court of the county. It was the duty of the board of county commissioners to refund the money, and the court so held. This is the settled law in Indiana. But before the trial court had passed upon the question the county treasurer had paid the money over to the state and town treasurers. The appellate court held that this did not affect the taxpayer's right of recovery; that the county treasurer had notice of the claim and should have retained the money.

On page 350 the court, passing upon the question, say:

> "When the county, notwithstanding the legal proceedings instituted to recover such money, nevertheless distributed the same to the state and town authorities, it did so at its own risk and peril, and the appellant can not be required to pursue such funds into the hands of the parties to whom they were wrongfully distributed."

Further along on page 350 the court holds that the county treasurer was a trustee for the taxpayer; that the moneys paid in became county taxes until distributed.

The language of the court in that case so fully covers the point presented in this case that we quote it:

"The assessment and collection of taxes, as found by the court, had been made in solido, and not in parcels. When it was paid into the county treasury it became county taxes for all purposes until it had been distributed to the various funds. As long as it remained in the county treasury it was held in trust by the county, either for the appellant or for the proper funds to which it respectively belonged. When the board of commissioners received notice of the appellant's claim, the county became a trustee for the appellant, and in the event it was afterward adjudged that his claim was a meritorious one, it became obligatory upon the county to refund the money to appellant, which had been erroneously paid by him. The town of Crown Point collected no taxes from the appellant. It was the county or its representatives who did this, and the county alone must respond as long as the funds are in its treasury. When this action was instituted, the money was all in the possession of the appellee, and it is impossible for us to conceive how the appellee could be held to profit by its own wrong in subsequently paying out or distributing the money or any part thereof to the state or town. The pendency of a suit is always sufficient notice of the matter involved in such suit, at least to the parties to the litigation, and those who claim under them. Arnold v. Smith, 80 Ind. 417. If this be true, there was certainly no necessity for suing out an injunction in order to hold the appellee accountable.

"It is true that the statute provides that when a portion of the taxes wrongfully assessed and paid shall have been paid for state purposes the commissioners shall give the claimant a

> certificate to the auditor of state for the repayment of the same by the treasurer of state. But this provision is expressly limited to cases where the money had already been paid into the state treasury at the time the action was commenced. R. S. 1894, section 7916 (R. S. 1881, section 5814). The section cited has no application when the money is still in the county treasury at the time of the action to recover the same."

Various provisions of the statutes of Indiana not necessary to quote make up the following data, which is of importance in this case:

> The county board of review meets on the third Monday in June annually;
>
> The state board of tax commissioners meets on the second Monday of July annually;
>
> The levies are fixed and the tax duplicate made up and turned over by the county auditor to the county treasurer for collection on January 1st of each year, following said assessments;
>
> Taxes immediately thereafter become due. They, however, do not become delinquent, if the first installment is paid by the first Monday in May following; and the second installment is not due until the first Monday of November following;
>
> The taxpayer has all of this period in which to pay his taxes.

The appellee could have paid his taxes any time between January 1st and May 1st, and filed a claim before the board of county commissioners for refunder of his taxes, and from their action an appeal is given

to the circuit court. It is not only an adequate remedy, but is a short, speedy, simple, summary and cheap remedy.

R. S. 1894 §7917;
Shultz v. Board, 20 Ind. 178;
State v. Board, 63 Ind. 497.

SUMMARY.

To sum up the above propositions:

First. The appellee had a complete and adequate remedy at law by appeal to the state board of tax commissioners from the assessment made by the county board of review.

Second. It failed and refused to pursue this remedy, which was open to it, and which it was its duty to pursue; and having failed so to do, it lost its right in the state or federal courts to assail the assessment made by the county board; and for that reason alone the court below erred in overruling the demurrer to the bill and holding the bill good.

Third. The presumption is that the state board of tax commissioners would have remedied any evil and corrected any erroneous assessment, if such there was.

Fourth. If the state board refused to make such correction, the taxpayer could wait until after the first day of January following, when he could have paid

the taxes to the county treasurer and immediately filed claim with the board of county commissioners for the refunding of the illegal taxes assessed for all purposes.

Fifth. This remedy was not only adequate, complete and perfect, but was a much more speedy and simple remedy than to proceed as appellee has done in this case. The record shows that more than five years have elapsed since the bill was filed in this case, and it is probable that more expense has been incurred by way of costs and fees than the total amount of taxes involved.

Sixth. No "irreparable injury" could possibly have resulted, and appellee, if it had pursued the remedy that the statute distinctly points out, as the assessment by the county board and the state board would have been made months before any taxes would be due from appellee; and, further, after such taxes were due it had four months in which to pay same and prepare its petition for refunder for each of the years complained of.

Seventh. No "multiplicity of suits" was stayed by this injunction. On the contrary, one simple petition filed with the board of county commissioners would have covered the entire taxes charged to have been illegally assessed and collected, and, if refused, appellee could have filed its complaint in the circuit or superior court of Marion county.

Eighth. The alleged illegal taxes could in no event cast a "cloud" upon the title to appellee's real estate,

because appellee owned no real estate, and no taxes, of course, thereon are involved in this controversy.

Ninth. Appellee having failed either to appeal or to pay its taxes and file a petition for refunder, as the statute of Indiana provides, the bill was bad, and the circuit court of the United States should have sustained the demurrer and dismissed the bill.

Second. The evidence sustained the assessment by appellants upon appellee's property, and sustained appellants' answer that the letters patent held by appellee were not taxed.

We have quoted above in this brief the statute governing assessments of domestic corporations in Indiana. The appellee was a domestic corporation, organized in February, 1891, pursuant to the laws of Indiana, for manufacturing purposes, with a capital stock of $200,000. The capital stock was increased in February, 1893, to $360,000.

Section 8 of the act of March 6, 1853, being §5060, R. S. 1894, respecting the organization of manufacturing companies, under which law appellee was incorporated, reads as follows:

> "The capital stock, as fixed by such company, shall be paid into the treasury thereof, within eighteen months from the incorporation of the same, in such installments as the by-laws of the company assess and direct."

The supreme court of Indiana have construed this section to mean something.

In the recent case of Clow v. Brown, 150 Ind. 185, the supreme court, in the construction of the above section, on page 192, use this language:

> "The statute already cited, section 5060, Burns' R. S. 1894, which requires that 'the capital stock, as fixed by such company, shall be paid into the treasury thereof, within eighteen months from the incorporation of the same,' means what it says. A sham payment, such as made in this case, was certainly never intended. Incorporators have no right to display an array of paid-up stock before the eyes of the public, unless money or property, dollar for dollar, stands behind each share of stock so held out to the world as paid up. * * *
>
> "Simulated subscriptions by persons who have neither the ability or purpose to pay, and arrangements between the subscribers and the agents or promoters of a corporation, that subscriptions shall be merely colorable, are a fraud upon the law."

Now, let us lay side by side with the above statute and the decision thereon by the supreme court of Indiana the returns made by the appellee company each of the years 1892, 1893 and 1894.

In 1892, Mr. Sharpe, the secretary and treasurer of the company, who made the report for the company each year, filed a sworn report that the entire $200,000 of capital stock, then authorized, was paid up.

(See Rec., p. 32.)

In 1893, the same officer swore that the $360,000 of capital stock of the company was entirely paid up.

(See Rec., pp. 35, 36.)

In 1894, both the secretary and president swore to the return. (Rec., pp. 59 and 60.) They state that all of the 7,200 shares of stock had been actually issued. These are the same number of shares that the secretary swore were issued in his report for 1893.

In 1895, the secretary again swears to the appellee's statement.

(See Rec., pp. 51 and 52.)

He, however, again swears that 7,200 shares of stock were actually issued.

These shares of stock having been actually issued for more than two years, must be presumed to have been paid up. In fact from 1893, when the secretary swears that all of the stock had been fully paid up, it must be presumed to have continued as fully paid up stock during all the years in question.

VALUE OF CAPITAL STOCK.

Appellee's contention is that the capital stock, franchises, etc., of this company, should not be assessed for more than the tangible assets of the concern, for the reason that the capital stock of the company originally was traded for patents to various individuals.

We deny that the values of the patents for the respective years 1892, 1893, 1894 or 1985 were taxed. We assert that neither the patents themselves nor the value thereof were taxed. The question of the right to tax patents at all, we shall discuss in the last portion of this brief.

It is contended by appellee that the assessment made by the county board of review, which, by the law of Indiana, is the original assessment, was based upon the schedule of personal property filed by the appellee with its regular statement as a corporation.

The said schedule for 1892 does not appear in the record at all.

The said schedule for 1893 appears on pages 37-41 of the record.

The schedule for 1894 appears on pages 46-49 of the record.

The schedule for 1895 appears on pages 54-57 of the record.

Let us take each year by itself, and see if this is true.

1892.

The record, page 32, contains the company's statement for this year. It is made strictly in accordance with the language of the statute above shown in this brief. The market value of the shares of stock was sworn to be $20,000. The personal property of the company was sworn to be worth $5,000.

The county board assessed the property at the sworn valuation made by the company. The secretary, on page 34 of the record, testifies that the paid-up stock was $20,000; that is plainly an error of the reporter and should read $200,000, to correspond with his own sworn statement on page 32. When asked what kind of business the company was doing, the secretary answers:

> "Manufacturing straw stackers on an improved patent of the old Buchanan cyclone business. It is a means of stacking straw with wind. That is what we are doing. We blast the air, or throw it through a chute. After we demonstrate it it becomes a great deal more valuable. We felt we were putting it at a fair value at $20,000."

Whereupon the board fixed it at that price.

There is not a word in the record showing that the company owned any patents at all at that time. The assessment was made exactly for the amount sworn to by the secretary. There was no way for the board to know that the appellee owned a single patent, when it made the assessment for 1892. The value of the capital stock being greater than the value of the tangible property, it made the assessment pursuant to the law of Indiana.

It is true, when this suit was brought, two years later, Secretary Sharpe testified that the assets of the company in 1892 comprised certain machinery, material and cash in bank, amounting to $5,000 (see Rec., p. 21). This excluded the value of all patents.

When asked upon what he based the value of the stock back in 1892, he said as follows (Rec., p. 21; Q. 12):

> "Q. Please explain how the stock came to have any such value.
>
> "A. Largely upon the faith of the investor that, in the development of the business, profits could be made that would warrant the investment."

Still further along, that the company then owned patents, and that the value of the stock was based entirely on the patents.

Still further along, that the company then owed a firm $6,000.

On page 29 of the record, Sharpe again testified as follows:

> "Q. What tangible property did the company have on the first day of April, 1892, and its value, if you know?
>
> "A. It would be impossible to state the value, but the property consisted of machinery, material and money in bank.
>
> "Q. Have you any idea of the value of the tangible property on the first day of April, 1892?
>
> "A. My idea would be that it was principally in machinery and material, say about $2,000 machinery, $2,000 material and $1,000 in cash. Now, I might be entirely wrong about that."

The board this year fixed the valuation at exactly the amount returned by the secretary.

For this year the sworn report appears on page 35 of the record. The capital stock had increased to

1893.

$360,000. It was all paid up. Every share was actually issued. The market value was sworn to be $36,000 by the secretary. The personal property had increased from $5,000 in 1892 to $33,900 in 1893. The indebtedness had increased to $25,000. The company was notified to appear before the board (Rec., p. 42), but failed to do so, and the board fixed the assessment at the valuation of stock sworn to by the secretary. The stock being more valuable than the tangible property, it was assessed at such pursuant to the statute as heretofore set out.

In this statement of the corporation, nothing is said about patents.

It is true a schedule of personal property appears on page 37. This schedule shows that this company had credits to the extent of $24,744. These credits have nothing to do with the patents, nor are any patents figured in with the list. These consist of notes, accounts and bank deposits. In addition to this $24,744 of credits, it had $11,900 of other tangible assets, wholly exclusive of all patents, making a total of $36,644 of actual cash tangible assets in 1893, according to this schedule that appears in the record. It is true in that schedule the number of patent rights and value is given as $25,000 (Rec., p. 38).

The company did not appear at the hearing of the county board of review.

(See Rec., p. 42.)

On page 29 of the record the secretary of the company says:

> "Q. If the Indiana Manufacturing Company had any tangible property on the first day of April, 1893, please state what kind, and give its value.
>
> "A. It had stackers in process of manufacture to the amount of $3,500; material, $2,000; machinery, $2,000, and other property amounting in total to $8,900."

1894.

In 1894 the value of the shares was placed by the company at $36,000. The indebtedness at $50,000, and the personal property within the state at $32,645. (See Rec., pp. 59 and 60.)

This year the company appeared before the board of review and for the first time suggested anything respecting the value of patents, at the hearing before the board of review. (See stipulation of omitted testimony filed in this case, pages 1 to 4, and attached to the original record.)

The attorney for the appellee, on page 1, has this colloquy with the county treasurer, Mr. Holt:

> "Mr. Holt: Your capital stock is $360,000?
>
> "Mr. Bradford: That is pretty nearly all wind.
>
> "Q. What are the patents included at?
>
> "A. $25,000.

"Q. The balance is cash, the balance is tangible property, actual valve?

"A. Yes, the remainder of the return is justly taxable. The patents we hold are not justly taxable.

"Q. Where is the other tangible property?

"A. It is some machinery in the shop across the river, threshing machines, straw stackers, office furniture, and one thing and another.

"Q. This represents the value of the patents —$25,000?

"A. That is the value of their patents.

"Q. The capital stock is $360,000, and $25,000 of that is included in the patent?

"A. Of all the value returned, $25,000 is on account of the patents.

"Q. That would leave $335,000 of paid-up capital stock?

"A. ———."

As showing that the value of the patents was not taken into consideration at all in valuing the capital stock, we refer to the following colloquy, on page 2 of said stipulated statement:

"Mr. Taggart (the auditor): There is one question here—'If no market value, then the actual value, of your stock, $36,000'—you can not get away from that question. We are not bothering your patents. The patents are not taken into consideration."

Then follows the examination by Mr. Holt, treasurer, of Mr. McKain, the president of the company, that must be conclusive evidence as to the value of the capital stock:

"Mr. Holt: What is the stock worth?

"Mr. McKain: I would not want to take anything like this for mine.

Mr. Holt: What do you think it is worth on the dollar? Is it worth par?

Mr. McKain: Yes sir, I think it is.

Mr. Holt: What is the capital stock?

Mr. McKain: $360,000. I would just as soon you would assess it at that as $36,000."

Thereupon, the board assessed the stock at one-tenth of what the president, who owns a majority of all the stock, testified it is worth. The assessment was placed at $36,000.

For this year the sworn return of the officers of the company and its statement by its counsel before the board, are that the total value of the patents is $25,000. The president of the company, the owner of the controlling interest in the stock, swears that the stock is worth par.

What then makes up the difference between the value of the patents and the value of the capital stock, to wit: $335,000?

It must be the value of the manufacturing plant; the manufacture of threshing machinery under the patents. It is true patents may be used in the manufacture of them; but for the year 1894, the franchise, tangible property, good will and business of this concern, must have been worth very much more than the $36,000 for which it was assessed, and this wholly independent of all consideration concerning patents or their value.

It is true on page 31 of the record the auditor is made to say in a certificate that the item of patents was taken into consideration in fixing the said assessment. This is not a part of the certificate, has no right to be there, or to be considered as such, and was wholly unnecessary. And there was no authority in law for the auditor to make such a certificate.

His statement in that certificate is wholly at variance with the statement above quoted, when he was acting as an officer on the board, where it was his duty to act under oath. Evidently, in the above certificate the auditor meant to say that they took into consideration the patents in fixing the assessment, but did not add the value of the patents to the value of the capital stock. This must be true, from an examination of the evidence taken before the board at its meeting in 1894, as shown in the proceedings thereof above quoted.

On page 23 of the record, the secretary of the company swears that in the year 1894, the indebtedness of the company amounted to $50,000.

1895.

Before the statement for this year was filed, the appellee had brought suit in the federal court to enjoin the payment of taxes, and the statement of the company was prepared with reference to this suit.

On page 51 of the record, the company's statement for the year appears. It reiterates that 7,200 shares

of the capital stock are actually issued. As to the question "market value of the shares of stock," the answer is "don't know." To the question "actual value," no answer was given.

Instead of a frank answer, as had been given before the lawsuit began, this expression is voluntarily injected by the company in its tax return for 1895.

> "The entire capital stock was issued in exchange for certain patent rights or letters patent, and has no value except such as it derives from such patent rights. The tangible property of the corporation is not sufficient to meet its indebtedness."

Further on the company, on page 52, reports its indebtedness at $50,000, and this excludes the amount paid for the purchase or improvement of property, and the indebtedness for current expenses. The company reports $10,137 of personal property. It also reports a difference in value between the tangible property and capital stock of $39,863.

On page 53 of the record, the personal property schedule which accompanied the corporate statement of the company was a statement for this year, that the company had credits $22,891; indebtedness, $50,000; personal property, $10,137. For this year no patents were reported at all, nor was any value of patents reported, and yet, the company reports actual credits and personal assets amounting to $33,028. In addition to this, it owed $50,000 debts.

The board assessed the company at $36,000.

The record does not show that the company appeared before the board of review at its hearing in 1895, to either remonstrate or object to the assessment, or to enlighten the board in any particular or upon any subject.

Sale of Stock.

On pages 28 and 29, the secretary shows various sales of stock of the company, as follows, $50 being the par value of the stock:

March 19, 1892...	3⅜	shares at	10 per cent.
October 9, 1892...	5	"	20 "
January 12, 1893..	..	"	15 to 18 "
October 20, 1893.	7	"	par.
November 17, 1893	80	"	45 "
1893.....	1,000	"	20 "
December, 28, 1894	3	"	66⅔ "
Total.....	1,098⅜	shares.	

Here we have a sale for cash, for real estate, for trade of various kinds, of the stock of this company to various individuals, from 1892 to 1894. None of it ever sold for less than ten per cent., and from that figure on up to par. It was never assessed for taxation at over ten per cent.

What helped to make up this value? It was everything that makes a prosperous manufacturing company. It is the plant, the franchise, the business capacity of the officers, the energy with which the business is conducted, the care, prudence and foresight of

its managers, and the money spent in conducting and advertising the business, and many other things.

On page 30 of the record, the secretary testifies that this company expends between forty and fifty thousand dollars per annum for advertising, expense of purchasing and delivering catalogues, traveling expenses in effecting royalty contracts and introducing the stacker to the notice of the manufacturers and thresher men; that its business extends to all the wheat growing sections of the United States.

It is true that after the lawsuit was contemplated and in motion, the officers injected into their statements conspicuously the value of their patents.

The Board did not Add Value of the patents in Fixing Assessments.

The county board has no interest other than to be fair between all taxpayers. The assessment of this company at one-tenth of the par value of the stock, in the face of the sworn statement of the president, that the stock was worth par, shows that the board did not entertain hostile feelings toward the appellee.

We ask the court to read carefully the answer on page 11 of the record. Each member of the board swears to it. That answer, as before set forth in this brief, after reciting the assessment for the various years, says:

> "But these defendants further say that the plaintiff is a corporation doing a lucrative manu-

> facturing business, which was well established and widely known, with a large amount of tangible property and a valuable franchise, exclusive of patents; that the market value of the stock of plaintiff, at the time for making the assessment for the year 1894 was $360,000, as defendants are informed and believe; that the value of said stock, at the time for making the assessments for the years 1892 and 1893 was at least $180,000, as defendants are informed and believe."

Then the board meets the proposition fairly as to the assessment of patents or patent rights, or the including thereof in the assessments made against the company. The sworn answer continues:

> "Defendants further say that the said board of review, in making said assessments for the years 1892, 1893 and 1894, the patents, if any plaintiff had, were in no way or manner included or considered, and that said board, in making said assessments, considered only the legally taxable property of plaintiff and no other."

In the face of this sworn answer, can a court, in an indirect, collateral proceeding, say that this assessment was erroneous, and that said board did take into consideration the assessment of these patents?

Can this assessment of the board be assailed collaterally, and lowered or raised?

Is the court going out into the field of speculation, to make assessments against individuals and corporations? Will it determine where, in the sliding scale of values, the state, the county, the city must stop in

its assessment? Is the court to furnish the yard stick for measuring values?

If it can do so in this case, it can do so in every case.

It is true the question of the value of patents is attempted to be injected in this case.

Almost every manufacturing company is operating under patents. The sleeping car companies; electric manufacturing companies; surgical instrument manufacturing companies; steel tool companies; railroad supply companies—in fact, most manufacturing companies that are prosperous are operating under patents, and their great profit comes from manufacturing articles under patents.

The court has no right to revise the value of property fixed by taxing officers for taxation except in case of fraud.

In the case of Keokuk & H. Bridge Company v. People, 161 Ill. 122, on page 140, the supreme court of Illinois say:

> "In fixing the value of property for taxation the assessor acts judicially, and the courts have no power to revise an assessment made by him merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property."

The court then discusses the remedy and holds that he must wait until the assessment is made and then defend, if there has been a fraudulent assessment, using this language:

> "But on an application for judgment against lands for delinquent taxes a defense may be made that a tax is unauthorized by law, or is assessed upon property not subject to taxation, or that the property has been fraudulently assessed at too high a rate."

Again, the supreme court of Illinois, in the case of Keokuk & H. Bridge Company v. People, 161 Ill. 514, on page 517, say:

> "Appellant, then, has had the benefit of the judgment of all the persons and boards known to our law whose province it is to pass upon the valuation of property for the purposes of assessment for taxation. Even if its property was assessed more in proportion to its value than other property in the township was assessed, and more than it should have been, yet it is plain there was no authority in the county court, upon the application for judgment, to either grant relief or refuse judgment, unless it was made apparent that there was fraud in the making of the assessment. Fraud is never presumed, but must be established by sufficient evidence; and especially could no presumption of fraud be indulged when the action of the assessor has been challenged before each of the two boards of review that the law has provided for revising his assessments, and has met with their approbation. The mere fact of overvaluation does not, of itself, establish fraud."

But assume that it was assessed too high by the board. This does not warrant the injunctive hand of

the court to stay the tax officers. On page 519, the court proceeds:

> "We are inclined to the conclusion, that while the assessor did not assess the property of appellant more than or even as much as its fair cash value, yet that he assessed it more in proportion to its value than he assessed other property in the township; but we find no evidence that satisfactorily establishes fraud, and justifies the conclusion that he did this from a wrong motive instead of an error of judgment, or that the boards of review acted from improper and fraudulent motives."

The supreme court of Indiana, in the case of Cleveland, etc., Railway Company v. Backus, 133 Ind. 513, define the law of Indiana upon this subject to be that no court can interfere or modify an assessment made by an assessing board, except it be for fraud. On page 536 the court use this language:

> "The legislature, by the acts in question, has prescribed regulations for the purpose of securing the valuation of all property for taxation; the method prescribed would seem to have in view the fixing of the value on property by persons and boards best calculated to know the value of the property required to be valued by them, and with a view of arriving at a just and equal valuation of all the property within the state subject to taxation, providing county boards of review to correct errors of local assessors, and then a state board to fix the value of the property of railway companies extending through the state, and to equalize the valuations and assessments

of property throughout the state. That the method prescribed in the act is one calculated to secure a just and equal valuation and assessment of property throughout the state, can not be reasonably questioned, and is one which the legislature had the right to adopt."

Further along, on page 541, the court uses this language, which seems to us conclusive of the right of a court to interfere with the right of the taxing officers, by injunction, except in case of fraud:

"The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside, except for fraud on the part of the state board of tax commissioners, which would render the assessment void. Fraud vitiates even the most solemn judicial proceedings, and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties; but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the state board, of appellant's property, on the ground that the state board was guilty of fraud, or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies; and, if it were so contended, the averments of the complaint fall far short of being sufficient to present such a question. * * *

"The court having no power to review the proceedings, the action of the state board being final, no right of action existed to set it aside, except for fraud, and it not being attacked on that

> ground, no evidence was admissible, for it is a well settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this state. Cooley on Taxation, p. 748, and authorities there cited; Bass v. City of Ft. Wayne, 121 Ind. 389; Sims v. Hines, 121 Ind. 534; McCollum v. Uhl, 128 Ind. 304; Central, etc., Gravel Road Co. v. Black, 32 Ind. 468."

We have been discussing the evidence in this case. This is unnecessary, except in case of fraud. The motives which control the board, or the information which it had received, are not matters into which the courts can look, nor over which it had any supervisory control. The mental processes by which the board reached the conclusion need not be diagrammed to a court.

The supreme court of Indiana, on page 542, upon this proposition, use this language:

> "The court can not inquire into the evidence upon which the board made its assessment and determine as to whether such board arrived at just valuations or not. The board has passed upon that question, and with its adjudication the matter ends. The decision of the state board being final, the record of that board required to be kept by the law, section 121 of the act of 1891, is conclusive."

And, on page 546, further say, on this proposition:

> "The board was not limited to the schedule of the railway companies and rates fixed by

them, but had the right to seek other information which would enable them to arrive at a just valuation. But this court can not consider or review the question as to what evidence the board relied upon in arriving at the value assessed. It is urged that the board heard a speech of an attorney in the absence of the railway companies and their counsel, on the question of the taxation of railroad property. Even if this were irregular, it does not vitiate the proceedings."

In the Pittsburgh, etc., Railway Company v. Backus, 133 Ind. 625, the supreme court of Indiana again take up the proposition of the finality of assessments fixed by assessing officers of the state. On page 652 the foregoing proposition is elaborated:

"The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside except for fraud on the part of the state board of tax commissioners, which would render the decision void. Fraud vitiates even the most solemn judicial proceedings, and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties, but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the state board, of appellant's property, on the ground that the state board was guilty of fraud, or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies, and if it were so contended, the averments of the complaint fall

far short of being sufficient to present such a question.

"What we have said disposes of the major portions of the questions presented in the case. The court having no power to review the proceedings, the action of the state board being final, no right of action existed to set it aside except for fraud, and, it not being attacked on that ground, no evidence was admissible; for it is a well settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this state. Cooley on Taxation, p. 748, and authorities there cited; Bass v. City of Ft. Wayne, 121 Ind. 389; Sims v. Hines, 121 Ind. 534; McCollum v. Uhl, 128 Ind. 304; Center, etc., Gravel Road Co. v. Black, 32 Ind. 468."

Further along, the court against discusses the right of the courts to inquire into the evidence, motives and mental processes by which the board reached the conclusion it did as to the assessment of property:

"The court can not inquire what evidence the board made its assessment upon, and determine as to whether such board arrived at a just valuation or not. The board has passed upon that question, and with its adjudication the matter ends.

"The decision of the state board being final, the record of that board required to be kept by the law, section 121 of the act of 1891, is conclusive."

Both of the above cases came to this court, and appear as follows:

154 U. S. 421;

154 U. S. 439.

This court in 154 U. S., p. 434, affirmed the decision of the supreme court of Indiana:

> "The true cash value of the plaintiff's property in the state of Indiana in the year 1891 was a question of fact, the determination of which for the purposes of taxation was given to this special tribunal, the state board. Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it can not be overthrown by evidence going only to show that the fact was otherwise than as so found and determined. Here the question determined by the state board was the value of certain property."

This language is approved again in the case of Adams Express Company v. Ohio, 165 U. S., p. 229.

What makes up the value of the capital stock?

The supreme court of Indiana, in the case of Hyland v. Central Iron & Steel Company, 129 Ind. 68, construe the statute hereinabove set out, defining the method of returning and assessing the capital stock of domestic corporations in Indiana, and on page 70 say:

> "It can not be assumed that the tangible property necessarily represents the value of the capital stock, for the business of a corporation owning comparatively little tangible property may be so profitable as to impress upon its stock a value much beyond its tangible property; or it may be

> the owner of a franchise which gives the stock a value much greater than that of the tangible property of which it is the owner. A corporation which, in its sworn return, values its capital stock at almost five times as much as its tangible property, can not successfully assert that the taxation of its tangible property entirely absolves its capital stock from liability. It is, at all events, entirely clear that where it affirmatively appears, as it does from the evidence in this case, that the tangible property is not equal to the value of the stock, the stock is taxable to the extent that it exceeds in value the tangible property."

As an answer to the proposition that only the tangible property must be assessed, the court, on page 71, proceeds:

> "The only evidence as to the value of the capital stock, as well as the only evidence of the value of the tangible property, was that contained in the tax-lists, or schedule, and that certainly does not prove, or tend to prove, that there was double taxation, since the actual value of the capital stock is shown to exceed that of the tangible property more than one hundred thousand dollars. * * *
>
> "Here there was jurisdiction, for here there was a list placed before the board of equalization, as the law requires. That list disclosed property subject to taxation, and on that property—the capital stock—the statute expressly makes it the duty of the board to place a value. It may well be doubted whether the courts can interfere at all in such a case as this, for the rule supported by the weight of authority is, that

where there is jurisdiction and no principle of law is violated, the valuation of the board of equalization is conclusive. Cooley on Taxation, 747, 748; Small v. City of Lawrenceburgh, 128 Ind. 231; Board, etc., v. Senn, 117 Ind. 410. There is here no evidence that the valuation of the board was erroneous, and, certainly, no reason for setting it aside, even if the courts had power to do so. If the board had placed a much greater value upon the capital stock than that fixed by the appellee in the schedule, its action could not, under the rule referred to, be disturbed unless it was made to appear that some principle of law was violated."

This court, in the Backus case, 154 U. S., page 445, say:

"But the value of the property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put. In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another."

In the State Railroad Tax Cases, 92 U. S., p. 602, this language appears:

"It is obvious, however, that while a fair assessment under these two descriptions of property

will include all the visible or tangible property of the corporation, it may or may not include all its wealth. There may be other property of a class not visible or tangible which ought to respond to taxation, and which the state has a right to subject to taxation. Thus it may occur, as in fact is claimed by one of these companies, that, being insolvent, and its earnings not being sufficient to pay anything beyond its necessary expenses for operating the road and its repairs, this tangible property represents more than the real wealth of the company and its property. While, on the other hand, another one of these companies is so rich that, after paying its expenses and interest on a large amount of debt, it declares large dividends; and this interest and these dividends, when looked to in reference to what is called the tangible property, show that there is here another element of wealth which ought to pay its share of the taxes.

"This element the state of Illinois calls the value of the franchise and capital stock of the corporation—the value of the right to use this tangible property in a special manner for the purposes of gain. This constitutes the third valuation, which is likewise to be made by the board of equalization."

Further along, on page 602, the court define "capital stock."

"The words '*capital stock*,' as here used, do not mean the shares of the stock, but the aggregate capital of the company."

As a method of ascertaining the value of such capital stock, the board have a right to include the in-

debtedness of the company, as well as the assets, in estimating the value of the capital stock.

This is well stated by this court on page 605, supra:

> "It is therefore obvious, that, when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock."

When this has been ascertained by the board, shall it be said that the opinion of the court is better than the opinion of this board?

This court, on page 610, supra, has said "no," in this language:

> "As we do not know on what evidence the board acted in regard to these railroads, or whether they did not act on knowledge which they possessed themselves, and as all valuation of property is more or less matter of opinion, we see no reason why the opinion of this court, or of the circuit court, should be better, or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter."

On page 612, supra, the court continues:

> "But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different

> classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised, must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large state like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature, and of the evidence on which human judgment is founded."

On page 616 this terse language appears:

> "If there is an excessive estimate of the value of the franchise or capital stock, or both, it is by an error of judgment in the officers to whose judgment the law confided that matter; and it does not lie with the court to substitute its own judgment for that of the tribunal expressly created for that purpose."

This question was again presented to this court in the Express Company cases from Ohio and Indiana, and, in the Ohio case, 165 U. S., p. 223, this court approved the language of the supreme court of Ohio:

> "But, taking the market value of the entire capital stock as a datum, the board is to be only guided thereby in ascertaining the true value in

money of the company's property in this state. The statute does not bind the board to find the value of the entire property of the company equal to that of the entire capital stock.

"But the property of a corporation may be regarded in the aggregate, as a unit, an entirety, as a plant designed for a specific object; and its value may be estimated not in parts, but taken as a whole. If the market value—perhaps the closest approximation to the true value in money—of the corporate property as a whole, were inquired into, the market value of the capital stock would become a controlling factor in fixing the value of the property."

And again, on page 224, this court approves the language of the supreme court of Ohio, to the effect that the *good will* of the concern, and the skill and experience may make capital stock valuable when the tangible property is of meager consequence.

"If by reason of the good will of the concern, or the skill, experience and energy with which its business is conducted, the market value of the capital stock is largely increased, whereby the value of the tangible property of the corporation, considered as an entire plant, acquires a greater market value than it otherwise would have had, it can not properly be said not to be its true value in money within the meaning of the constitution, because good will and other elements indirectly entered into its value. The market value of property is what it will bring when sold as such property is ordinarily sold in the community where it is situated; and the

> fact that it is its market value can not be questioned because attributed somewhat to good will, franchise, skilful management of the property or any other legitimate agency."

Further along, the court approves the doctrine that the *earning capacity* of property may be taken into consideration in fixing values, and say, on page 225:

> "It will, we think, be conceded that the earning capacity of real estate owned by the individuals may be considered in fixing its value for taxation. Take an office building on a prominent street in one of our large cities. It will not be doubted, that by care in the selection of tenants, and in the preservation of the reputation of the building, by superior elevator service, by vigilance in guarding and protecting the property, by the exercise of skill and knowledge in the general management of the premises, a good will of the establishment will be promoted, which will tend to an extra increase in the earning capacity and value of the building. For the purpose of taxation, it would be none the less the true value in money of the building, because contributed to by the operative causes that gave rise to the good will. We discover no satisfactory reason why the same rule should not apply to the valuation of corporate property—why the selling value of the capital stock, as affected by the good will of the business, should be excluded from the consideration of the board of appraisers and assessors under the Nichols law, charged with the valuation of the corporate property in this state, especially as the capital stock, when paid up, practically represents at least an equal value of the corporate property."

When this case came up for re-hearing, this court further elaborated the subject of values of capital stock, and defined some of the elements that go to make up such values. In 166 U. S., on page 219, this language appears:

> "It matters not in what this intangible property consists—whether privileges, corporate franchises, contracts or obligations. It is enough that it is property which though intangible exists, which has value, produces income and passes current in the markets of the world. To ignore this intangible property, or to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now, whenever separate articles of tangible property are joined together, not simply by a unity of ownership, but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lists, and the only property placed thereon be the separate pieces of tangible property?
>
> "The first question to be considered therefore is whether there is belonging to these express companies intangible property—property differing from the tangible property—a property created by either the combined use or the manner of use of the separate articles of tangible property, or the grant or acquisition of franchises or

> privileges, or all together. To say that there can be no such intangible property, that it is something of no value, is to insult the common intelligence of every man."

On page 220, this court asserts the cardinal principle respecting the taxable value of property:

> "Now, it is a cardinal rule which should never be forgotten that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation."

We know of no single sentence in the books that contains a more comprehensive statement of the law of taxation of corporate stocks, franchises and property than is contained in the above sentence.

On page 221, this court enumerates further elements of value:

> "The capital stock of a corporation and the shares in a joint stock company represent not only the tangible property, but also the intangible, including therein all corporate franchises and all contracts, privileges and good will of the concern."

And on page 222:

> "But what a mockery of substantial justice it would be for a corporation, whose property is worth to its stockholders for the purposes of income and sale $16,800,000, to be adjudged liable for taxation upon only one-fourth of that amount. The value which property bears in the market, the amount for which its stock can be

> bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income, or for purposes of sale."

We have thus fully quoted the authorities upon the subject of values of capital stock and the finality of the valuation placed thereon by the board of review, believing that the substance of the law, as defined by the supreme court of Indiana and the United States, is conclusive against the injunction granted in this case.

Putting side by side the sworn statement of the president of this company that the capital stock of this company was worth $360,000 in 1894, and its statement that its patents were worth $25,000, together with the sworn answer of the board of review that it did not take into consideration the value of the patents and the record of sales of stock made, is it not fair to conclude that the Marion county board of review assessed the value of this stock far below its actual value, exclusive of patents, rather than above the value of such stock?

What difference does it make, if some or all of this stock was originally, years ago, traded for patents? They were not purchased of the patentee; it was a matter of speculation with the stockholders. The company, after purchase of the patents, expended forty to fifty thousand dollars a year in advertising and building up the business; it had a manufacturing

plant, machinery, tools, fixtures; it had threshing machines; it had cash; it had a franchise that was taxable; its debts ran up to $50,000; it had large tangible assets, both bills receivable, notes and accounts and other tangible property.

Admittedly it is doing a very prosperous business, or the president would take par for his stock. He has been in the company from the beginning and presumably knows as much about its value as any other person in the company.

Taking all these things into consideration, can this court, or any court, say that the assessment fixed by the county board shall be stricken down for fraud or illegality? Can this court say that the board took into consideration any part of the value of the patents in assessing said stock?

Summing up this branch of the argument, we say:

First. That the court erred in granting the injunction, because the court can not inquire into the valuation placed upon the capital stock of this company, except in case of fraud.

Second. The court can not inquire into the source of information or mental processes by which the board arrived at the value of the capital stock of appellee.

Third. The decision of the board of review was final and can not be assailed in this proceeding.

Fourth. The assessment placed upon the capital stock of appellee is sustained by the great weight of testimony in the case.

Fifth. The value of the patents was not added in making up the assessment.

Sixth. The assessment fixed by the county board of review was fair, just and equitable, and can not be assailed in a court of chancery in a proceeding for injunction.

Third. The value of patent rights owned by a manufacturing company can not be deducted from the aggregate assessment made against the shares of capital stock of such company.

The assessment complained of in this case was made against the shares of capital stock of an Indiana manufacturing company. It was not made against any patent or patents. The Indiana statute for such assessment is set forth in a former part of this brief.

Neither of the tax statements filed by the appellee for the years 1892 (Rec., p. 32), 1893 (Rec., p. 35), 1894 (Rec., p. 59), 1895 (Rec., p. 51), contained any statement by the company as to the value of any franchise or privilege owned by it. In neither of these statements does the company fix or attempt to fix any value whatever on patents owned by it.

For the years 1892, 1893 and 1894, it does not refer at all to any patents owned by it, and in the statement for 1895, it states that the entire capital stock was issued in exchange for certain patent rights or letters patent. The court will notice that nowhere in its sworn statement does the company fix any value upon its patents.

In its schedule of personal property, it fixed the value of patents at $25,000; but in its sworn statement of the value of its capital stock, as a manufacturing company, and of its assets generally on which the assessment for taxes is made, there is no reference at all, in the years 1892, 1893 and 1894, to the ownership of patents, or the value thereof; and in the statement for 1895, it does not give the value thereof.

Therefore, no assessment whatever was placed against the patents *eo nomine*, for either of the years 1892, 1893, 1894 or 1895.

The appellee contends that since all of the capital stock of the company was originally traded for certain patent rights, no assessment whatever can be made against the company during the life of the patents, except upon the naked actual tangible property; that it matters not how much may be expended in the development of the business (which, in this case, amounts to hundreds of thousands of dollars), it can not affect the legal status of the stock; that during all the years of the lives of these patents, or the extension of such patents—if such there be—this stock is exempt from taxes.

We insist that if the patents were worth anything, they simply go to make up, with all other assets of the company, the value of the shares of stock thereof. This is not a case where *a part of the stock* of the company was exchanged for patents, but, in this case, *all* of the stock is charged to have been traded for patents.

Therefore, if large expenditures of money in advertising, great energy displayed by its officers, and skill in the management of its business, shall result in building up a plant, the shares of stock of which shall be worth $1,000,000, and the tangible property but $50,000, no assessment can ever be made for any purpose of taxation, except upon the $50,000.

That is the proposition. It not only involves this case, but involves thousands of other cases, where part or all of the capital stock was originally traded for patents.

We are not here contending that the patents, *eo nomine*, are taxable. We do contend, however, that the great weight of authorities supports the proposition that the value of patent rights owned by a manufacturing company can not be deducted from the aggregate assessment made against the shares of capital stock of such company.

We shall now review all of the cases that bear directly upon this proposition.

This court has never passed upon the question.

The only courts that are apparently not in harmony with this view, are the courts of Pennsylvania and New York.

In the case of Commonwealth v. Westinghouse Mfg. Co., 151 Pa. St. 265, the supreme court of that state affirm the decision of the *nisi prius* court, which held that the portion of the capital stock of the Pennsylvania corporation, invested in patent rights can not be taxed by the state.

This is the case that will be largely relied upon by appellee. In the statement of the case it appears that that company was expressly authorized to "make purchases and sales of and investments in the securities of other companies," and to do many other enumerated things which were not manufacturing.

The opinion is very brief, and does not discuss the general proposition. That court has affirmed, in two or three other cases, the exemption of such stock from taxation; all without an opinion, however, or discussion of the proposition.

The New York court of appeals has entertained two views of this question directly opposite each other. The first case is that of People v. Campbell, 138 N. Y. 543. Here the court of appeals, in a learned opinion rendered by Earl, Judge, hold that the value of patents held by a manufacturing company is to be included in the taxation of its capital stock.

In that case, as in this, the company was a domestic corporation, with a capital of $1,500,000. It was assessed by the comptroller for $3,000,000. There, as here, the company did not complain that the value placed upon its capital stock was too high. It did contend that it ought not to be assessed upon securities that were purchased with patent rights. In that case the entire capital stock of the company was originally invested in patent rights. Corporations were formed in various cities to use these patent rights; in consider-

ation for which the company received stocks of such corporations.

On page 545, the court say:

> "So much of its capital, to wit, its patents, as was used to purchase such stocks, was employed for that purpose, *and was thus used for the business of the relator.* * * * They took the place as a portion of the relator's capital of the patent rights transferred in payment for them. * * *
>
> "It took a portion of its capital, to wit, a portion of its patent rights, and employed it outside of the state to purchase those stocks. * * *
>
> "It is said in this record, although not distinctly shown, that the relator also held bonds of foreign corporations issued to it in payment for patent rights granted. We think that so much of the capital as was invested in such bonds was a basis of taxation here, under the act. * * * The bonds took the place of the patent rights granted for their purchase."

The above quotation referred to bonds that were in the hands of the company, taken in exchange for patent rights. This is the first proposition discussed in that case. After the court had disposed of that, it took up the direct question here presented, namely: Shall the patents that have not been sold by the company be assessed for taxation?

On page 547, the court answers that question affirmatively and decisively:

> "A patent is an incorporeal right—a franchise, conferred by the sovereign power upon the patentee. It is personal to him, and until he is divested of the title thereto, like other personal rights, it attends his person and exists where he is or where he puts it to use. We are, therefore, of opinion that the comptroller did not err *in including in the capital of the relator*, to be estimated for taxation, its patents, so far as they had not been disposed of."

This case is distinguished in the case of Crown Cork and Seal Co. v. State, 87 Md., p. 687.

The question re-appears in the case of People ex rel. Edison El. Il. Co. v. Assessors, 156 N. Y., p. 417. Here, that court express a view directly contrary to that expressed by it in the case above quoted. It does so without referring to the above cited case. A part of the capital stock of the Edison Company was invested in patent rights.

The court held that the capital stock of the company was not liable for assessment for taxes, for the value of patent rights held by the company. This decision is based upon the proposition that patent rights are granted under the federal constitution, for federal purposes.

This decision, as well as the Pennsylvania case above quoted, is based upon a statement made in the United States Bank case—McCulloch v. Maryland, 4 Wheat. 316. That case was an attempt to tax the United States Bank, which was an undoubted federal agency; that case will be further discussed in this brief.

The above are the only cases that we have been able to find passed upon by the courts of last resort, where the question here presented was discussed and decided against the right to tax the capital stock of a manufacturing company including the value of patents.

In the United States Bank case, supra, the court, in a general discussion of the right to tax the federal agencies, refer, as an illustration of such right, to the right to tax patent rights. It will be observed that in this case there is no attempt, we insist, to tax patent rights.

Let us now examine the cases holding the opposite view—the one that we insist is the correct one.

The most elaborately argued case in the books, where this precise question is presented, is the case of the Crown Cork and Seal Co. v. Maryland, 87 Md. 687.

The court here discusses all of the cases then reported bearing upon the question. The stock of the company was assessed at its full value, no deductions being made for the value of patents, and the court, on page 695, say that the leading question in that case was whether, in the assessment of the capital stock of the appellant company, for purposes of taxation, the appellant is entitled to have the assessment limited to the value of the property other than the patents granted by the United States. That is the precise question which we present here.

There, the taxes were levied without any regard to the value of the United States patents. The tax com-

missioner assessed the value of the shares of stock, and certified the return, and, on page 697 the court meets the proposition here presented in these words:

> "It is insisted that they (the taxing officers) have erroneously valued and assessed the patent rights in question, and this is the chief grievance of the appellant. But why should not the shares of stock in the appellant corporation be valued and assessed and taxes paid thereon? The number of corporations incorporated under the laws of this state, engaged in business here, employing vast sums of money and possessed of extensive property rights, is almost unlimited, and yet most of them, in the proper and successful management of their business, have been compelled to purchase and use patent rights, to enable them to compete successfully with other corporations engaged in a similar business. They are without exception compelled to pay taxes on their shares of stock levied and assessed in like manner with those in controversy here. *It is a total misconception of the object sought to be maintained on this appeal to assert that this is an effort to tax patent rights.*"

The court, then continuing its vigorous discussion of this question, and of the right to tax patents, *eo nomine*, say:

> "It is not, however, necessary to the determination of the rights involved in this controversy, to decide any such question. It is a proposition about which there is no lingering doubt, that patent rights are personal property and entitled to the same protection as any other prop-

erty (Cammeyer v. Newton, 94 U. S. 225); and it will remain for future consideration, whether a patent right may not of itself be a proper subject of taxation, but that as just stated is not a question necessary to be decided on this appeal."

Further along, on page 698, recurring to the original proposition of the right to tax the shares of stock, notwithstanding some of the value thereof may be made up of patent rights or franchises, this language appears:

"To say that the shares of stock of a corporation incorporated under the laws of this state can not be taxed because the corporation enjoys certain *franchises*, the very use of which enables it to successfully carry on its business, would be to strike down our entire system of taxation relating to corporations. And even if it be true that a patent right exists through the medium of a contract with the federal government, its only effect upon the value of the shares of stock of a corporation, which are unquestionably taxable, is to aid in the development of the business interests of such corporation, and largely multiply the chances of its successful management. So that it is not a question as to how the value of the shares of stock of such corporation have been enhanced, whether by the aid of patent rights, or by the sale of the manufactured product obtained by the use of such patent rights, or by the superior business qualifications of the agents of the corporation, who manage and control its affairs. *It matters not how numerous nor how valuable its patent rights might have been at the inception*

> *of the appellant's business enterprise*, the shares of its stock would now be comparatively valueless had not other agencies, forceful and active, put life and energy into the undertaking."

What is the scope of the patents granted? What is their operation? What does the government grant, or give? These questions are answered on page 699, supra:

> "The supreme court of Ohio, speaking with respect to the meaning of the patent laws of the United States, and quoted with approval in Patterson v. Kentucky, 97 U. S. 506, says: 'The *sole* operation of the statute is to enable him to prevent others from using the products of his labors except with his consent.' In the granting of patents, the federal government has never sought to do more, and in fact, has never exercised greater authority than to extend protection to the privilege, such as that granted by a patent for an invention, against the infringement of those who seek to invade it. * * *
>
> "After careful examination we have failed to discover any satisfactory authority, showing that the government has ever yet indicated any intention of limiting the power of the states in dealing with a subject of this kind although involving patent rights. It is a proposition without support to seek to maintain that patent rights are agencies or instrumentalities of the general government with which the states have no right, in any manner to interfere."

On page 700, the court discusses the Pennsylvania case, above referred to, in this language:

"The result of our investigation is that we have found but two cases directly bearing upon the subject of the taxation of patent rights, as such, which is not the specific question to be determined on this appeal. The case which supports the theory of the exemption of patent rights from taxation is the case of the Commonwealth v. Westinghouse Electric, etc., Co., 151 Pa. St. 265. The supreme court of Pennsylvania having filed no opinion, adopted that of the lower court, from which we briefly quote, and which sufficiently marks the distinction between the Pennsylvania case and the one now under consideration. The former case maintains that, 'The tax being upon the capital stock, it is a tax upon the company's property and assets.' This is not the law of Maryland, and such view is not the accepted doctrine held by the U. S. supreme court. Bank of Commerce v. Tennessee, 161 U. S. 146."

The court then takes up the case of People v. Campbell, supra, decided by the New York court of appeals, as follows:

"We have referred to the one case, that of 151 Pa. St. supra, which maintains, the non-liability to taxation of patent rights; the case of the People v. Campbell, 138 N. Y. 543, maintains a doctrine *directly* contrary to the Pennsylvania case. The New York case was a proceeding by *certiorari* to review the action of the state comptroller in imposing a tax upon the relator, the Edison Electric Light Company, a domestic corporation, under the Corporation Tax Act. The entire capital stock of the relator was originally invested in patent rights." (Page 701.)

The court then quotes at length, with approval, the opinion rendered by Earl, Judge.

We have thus quoted extensively from the Maryland case, because it contains an elaborate argument upon the entire question, more so than can be found in any other case, and is a recent case.

The supreme court of New Jersey, in the case of Storage Battery Company v. Board, 60 N. J. L. 66, is in harmony with the Maryland case.

In the New Jersey case, the company was organized with $10,000,000 capital, finally increased to $13,500,000. It had a cash capital of but $2,500. The balance of its capital was traded for patents.

Its entire capital stock of $10,000,000, less twenty-five shares, was traded to Gibbs & Payen for certain patents held by them. Afterwards, the $13,500,00 was issued and exchanged for other patents.

The state board assessed a tax upon the entire capitalization.

In that case a small amount of the capital was invested in the process of manufacture, and the court, after stating these facts, on page 69 use this conclusive language:

> "A small part of its capital is invested in the process of manufacture. Nearly all of its capital stock issued and outstanding was issued for the purchase of the patent rights of which the company became the owner. These patents were granted by the United States, by Great Britain and Belgium, and the agreement with Payen, the inventor, comprehends all patents that might be

> issued to him for his invention throughout the world. Corporations of the class to which this company belongs are taxable with respect to the amount of capital stock issued and outstanding as a fixed factor, *without regard to the purpose for which the capital stock was issued or whether issued for value or not.*"

The above are all of the cases we have been able to find that directly pass upon the question here presented. There are other cases, however, which we believe are controlling of the questions here involved.

Before any property is exempt from taxation, there must be a clear, well defined provision of the constitution, or of some statute, or by necessary implication, that will protect it from taxation. We can find no clearer statement of this proposition than that of this court in the case of Bank of Commerce v. Tennessee, 161 U. S. 134, on page 146:

> "These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language.
>
> "There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of con-

> struing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

The bonds and stocks of the United States are exempted by law from taxation, and yet, when those bonds get into the hands of a bank or corporation, the value of the shares of stock of such bank or corporation is taxed irrespective of the amount of United States securities held by such bank, and without regard to whether the whole or a part of the capital of such bank or corporation is invested in national securities.

This question was originally decided in the case of Van Allen v. Assessors, 70 U. S. 573. Van Allen insisted that the shares of stock of the bank were not subject to taxation, because all of the capital stock was invested in United States bonds.

On pages 581 and 582, this court, speaking through Judge Nelson, says:

> "The main and important question involved, and the one which has been argued at great length and with eminent ability, is, whether the the state possesses the power to authorize the taxation of the shares of these national banks in the hands of stockholders, whose capital is wholly vested in stock and bonds of the United States?
>
> "The court are of opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question

should be finally disposed of. I shall proceed, therefore, to state, as briefly as practicable, the grounds, and reasons that have led to their judgment in the case."

On page 583, the court answers the objection that a tax upon the stocks of the bank is a tax upon the bonds of the United States:

"The suggestion is, that it is a tax by the state upon the bonds of the government which constitute the capital of the bank, and which this court has heretofore decided to be illegal. But this suggestion is scarcely well founded; for were we to admit, for the sake of the argument, this to be a tax of the bonds or capital stock of the bank, it is but a tax upon the new uses and new privileges conferred by the charter of the association; it is but a condition annexed to the enjoyment of this new use and new application of the bonds. * * *

"The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own."

The right to tax the shares of national banks at their fair cash value, irrespective of the securities of the United States government held by such banks, was re-affirmed by this court in the case of National Bank v. Commonwealth, 76 U. S. 353. In that case

the entire capital stock was invested in securities of the government of the United States, and it was contended that they were not subject to taxation.

On page 361 is discussed the practice of many corporations to pay the taxes charged against them for the benefit of the shareholders. In Indiana the statute requires the corporations generally to pay the taxes upon the shares of its capital stock. This is for the convenience and also for the assurance of the payment of the taxes, where the stockholders are scattered throughout the state and throughout the United States. On page 361 this court say:

> "It has been the practice of many of the states for a long time to require of its corporations, thus to pay the tax levied on their shareholders."

This court asserts a doctrine which we have tried to emphasize, namely: That there must be some statute, or some constitutional provision that prevents the states from assessing and collecting taxes upon the franchises of the government. This court uses this language:

> "If the state can not require of the bank to pay the tax on the shares of its stock it must be because the constitution of the United States, or some act of Congress, forbids it. There is certainly no express provision of the constitution on the subject.
>
> "But it is argued that the banks, being instrumentalities of the federal government, by which some of its important operations are conducted, can not be subjected to such state legislation. It

> is certainly true that the Bank of the United States and its capital were held to be exempt from state taxation on the ground here stated, and this principle, laid down in the case of McCulloch v. The State of Maryland, has been repeatedly affirmed by the court."

And, on the next page—362—the court answers the argument that is made whenever the state's attempt to tax the franchises, so-called, of the government, namely, that the federal government's instrumentalities are liable to be taxed to death and destroyed. It is a reflection upon the state government that they can not be trusted to tax the results, or the instrumentalities themselves, of the government.

This court, answering all those arguments, say:

> "The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states. * * * So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the

> nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

In the case of Patterson v. Kentucky, 97 U. S. 501, the appellant was fined in the state of Kentucky for violating certain Kentucky statutes regulating the sale of oils, the formula for which was covered by a patent. Patterson insisted that his patent protected him from prosecution.

On page 503 that suggestion is met in these words:

> "It is true that letters-patent, pursuing the words of the statute, do, in terms, grant to the inventor, his heirs and assigns, the exclusive right to make, use and vend to others his invention or discovery, throughout the United States and the territories thereof. But, obviously, this right is not granted or secured without reference to the general powers which the several states of the Union unquestionably possess over their purely domestic affairs, whether of internal commerce or of police. * * *
>
> "All which they primarily secure is the exclusive right in the discovery."

On page 507, this court continues the discussion of this question:

> "The end of the statute was to encourage useful inventions, and to hold forth, as inducements to the inventor, the exclusive use of his inventions for a limited period. The sole operation of the statute is to enable him to prevent others from using the products of his labors except with his consent. But his own right of using is not enlarged or affected."

Railroad franchises are also granted by the United States; but, because of this fact, are all the states through which land-grant railroads, or railroads whose franchises were granted directly by the federal government, to forever escape taxation on that account? Are the stocks and bonds of the railroad company never to be assessed, because the railroad is operating under federal franchises? That question was presented to this court in the case of Railroad Company v. Peniston, 85 U. S. 5.

The doctrine is there again asserted that the state may exercise to an unlimited extent the right to tax property, except where limited by the federal law.

Speaking for this court, Mr. Justice Strong, on page 29, says:

> "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business and avocations existing or carried on within the territorial boun-

> daries of the state, except so far as it has been surrendered to the federal government, either expressly or by necessary implication, are propositions that have often been asserted by this court. * * * The constitution contains no express restriction of this power other than a prohibition to lay any duty of tonnage, or any impost, or duty on the imports or exports, except what may be absolutely necessary for executing the state's inspection laws. As was said in Lane County v. Oregon, 7 Wall. 77, 'In respect to property, business and persons within their respective limits, the power of taxation of the states remained, and remains entire, notwithstanding the constitution."

It may be that a tax upon stock that had been exchanged for patent rights would remotely affect the value of such patent rights; but, are the states to be prohibited from taxing such shares of stock, because remotely the value of some patent right is affected?

This court, on page 30, supra, answer this question:

> "It can not be that a state tax which remotely affects the efficient exercise of a federal power is for that reason alone inhibited by the constitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which federal taxes may be laid."

The United States government does not have any stock or interest in the Indiana Manufacturing Company. It granted to certain individuals a patent right. Those individuals exchanged those patent rights for stock in the Indiana Manufacturing Company. Why should not that stock be assessed and taxed?

This court, at page 32, supra, use this pertinent language:

> "Notwithstanding this, the railroad and the telegraph line are neither in whole nor in part the property of the government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The government owns none of its stock."

How much less interest has the government in the Indiana Manufacturing Company than it had in the railroad of its own creation, and largely constructed by it? The Union Pacific Railroad Company was a great national highway, chartered and largely constructed by and for the United States government, and yet that did not prohibit the court from charging that company with the value of such franchise.

It is contended because of this governmental privilege given to an individual that the government must therefore prohibit states from taxing that federal privilege, for fear that, if not the privileges, the dignity of the United States government will be affected.

This court, on page 33, discuss that question, as follows:

"It may, therefore, be considered as settled that no constitutional implications prohibit a a state tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the states in the collection of their necessary revenue without any corresponding advantage to the United States. A very large proportion of the property within the states is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. United States mails, troops and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the national service. So are steamboats, horses, stage coaches, foundries, ship yards, and multitudes of manufacturing establishments. * * * Were they exempt from liability to contribute to the revenue of the states it is manifest the state governments would be paralyzed."

Discussing the McCulloch and Osborne cases, 9 Wheat. 738, this court explains those decisions. In the former of those cases the tax was held unconstitutional because laid upon the notes of the bank; the latter case, the tax was held unconstitutional because it was a tax upon the existence of the bank itself.

It is true that this court, in the case of California v. Railroad Company, 127 U. S. 1, held that franchises *eo nomine* of the government can not be taxed. This court, however, in that case, on page 40, define what a franchise is, as follows:

> "A franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security."

Telegraph franchises are taxable, and the property of telegraph companies is likewise taxable. Telegraph franchises and railroad franchises are of vastly more public concern and are more direct instrumentalities of government than a patent could ever possibly be. In fact, we deny that a patent is an instrumentality of government at all. And yet, telegraph franchises are taxable.

This court, in the case of Western Union Telegraph Company v. Massachusetts, 125 U. S. 530, elaborately discuss this whole question. On page 547 the proposition is stated and argued as follows:

> "The argument is very much pressed that it is a tax upon the franchise of the company, which franchise being derived from the United States by virtue of the statute above recited can not be taxed by a state. * * * by whatever name it may be called, as described in the laws of Massachusetts, it is essentially an excise upon the capital of the corporation. * * *
>
> "The telegraph company derived its franchise to be a corporation and to exercise the function

> of telegraphing from the state of New York. It owes its existence, its capacity to contract, its right to sue and be sued, and to exercise the business of telegraphy, to the laws of the state under which it is organized."

The court held that notwithstanding the telegraph company derived its franchise or right to string its wires along all the post roads of the United States, yet that did not withdraw from the states the power of taxing the stock of the company.

This proposition is more fully discussed in the case of the Western Union Telegraph Company v. Taggart, 163 U. S., p. 1. That was an Indiana case. The taxes were levied by the state board of tax commissioners. The telegraph company contended that the Indiana taxing officers had included the franchises of the telegraph company as part of the property assessed for taxation; that because such franchises were derived from the federal government, therefore the stock of the company could not be taxed for the value of such franchises.

On page 18, this court, in an elaborate opinion by Justice Gray, after discussing the Indiana taxing statute, cover in a single sentence the whole proposition presented in this case:

> "Those decisions clearly establish that a statute of a state, requiring a telegraph company to pay a tax upon its property within the state, valued at such a proportion of the whole value of

> its capital stock as the length of its lines within the state bears to the length of all its lines everywhere, * * * is constitutional and valid, notwithstanding that nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States or for the value of its real estate and machinery situated and taxed in other states."

On page 28:

> "The bill * * * nowhere undertakes to fix the value of its franchises from the United States, the state of New York, and foreign countries; and the tax commissioners, by the authorities already cited, had the right and the duty, in estimating the value of the plaintiff's property in Indiana, to take into consideration those franchises and the other elements mentioned in this paragraph of the bill."

"The other elements" mentioned in the bill were the plaintiff's business; his property and good will, both in and out of the state; all in addition to the franchises above referred to.

But how is this court to ascertain from the record the valuation of the patents in question? By what sort of process is the court to ascertain just how much of the $20,000 assessment in 1892, and of the $36,000 in 1893, and the $36,000 assessment in 1894, and again in 1895, is made up of the value of the patent rights held by the company?

All of the defendants, who are sworn officers, under oaths and under bond, say, under oath, that they did not assess these patents at all. Upon what evidence is this court going to find that they did? Nobody has testified on the subject. The only testimony that, even by inference, covers that question, is the $25,000 statement of the secretary. The president says the stock is worth $360,000. The highest assessment placed by the board was but $36,000.

What sized mesh will this court use in its sieve, to separate the value of the patents from the value of the stock, exclusive of the value of the patents?

The complainant contends that the stock ought not to be assessed at all; that all that Indiana can do is to assess the tangible property. Is that true? Is it possible that because a company trades its stock for patents, that the injunctive hand of the federal court is to be laid upon the state to prevent it from assessing against this company the value of its capital stock, exclusive of the value of the patents? Shall all others of the hundreds of corporations in the various states be assessed for their good will, their business capacity, their expenditures in advertising, their building up of a great business, simply because such companies did not originally trade some or all of their capital stock for patents, while this company escapes such taxation?

And if not, how are the values of the patents to be determined? Shall they be valued at what they were worth when the patents were first taken out by the

patentee, or shall they be valued at the end of the first year, after thousands of dollars have been expended in exploiting them, in building up a great manufacturing business? Shall they be assessed at the end of the fifth year, when tens of thousands of dollars shall have been expended in building up the business throughout the state—perhaps extended into adjoining states; or, after ten years, after hundreds of thousands of dollars have been expended in the enterprise and the labor of hundreds of men employed in the factory of the company, and the skill of the artisan has added to the excellence of the manufactured article perhaps a hundred times more than the original values of all the patents owned by the company?

Certain it is, it seems to us, until some fraud has been perpetrated by the state taxing officers, until some evidence of oppression is present, until some overvaluation that amounts to confiscation shall be apparent or proved, that the federal court will not interfere with the orderly processes of state tribunals for performing duties admittedly strictly according to the valid statutes of the state.

We are making no assault upon the federal privileges or federal franchises; we are simply trying to have the personal property of a corporation, organized in Indiana, pay the taxes that it justly owes, and which it is unjustly trying to evade. No rights of the federal government are being infringed upon or curtailed; none of its instrumentalities are assailed.

We respectfully submit that the errors assigned by us are valid. All of the pleadings and evidence that the circuit court had before it are before this court.

We ask that the decree of the circuit court of the United States be reversed.

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Of Counsel.

No. 30.

Brf. of Richards, Taylor & Moores for Appts. Con'g

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Jan. 6, 1900.

No. 30.

STERLING R. HOLT ET AL., APPELLANTS,

vs.

THE INDIANA MANUFACTURING COMPANY.

BRIEF FOR THE APPELLANTS ON THE QUESTION OF JURISDICTION.

JOHN K. RICHARDS,
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THE INDIANA MANUFACTURING COMPANY.

Brief for the Appellants on the Question of Jurisdiction.

STATEMENT.

The appellee is a manufacturing corporation of Indiana, organized "to manufacture, use, and sell threshing machines, straw-stackers, and other agricultural implements." On July 13, 1894, it filed its bill in the circuit court of the United States for the district of Indiana, to enjoin certain officers of Marion county, Indiana, from collecting taxes assessed against it for the years 1892, 1893, and 1894. On August 10, 1895, it filed a supplemental bill to enjoin the collection of certain taxes assessed for 1895. The taxes in

dispute for 1892 are $284.94, and for 1893, $464.94. The amounts for 1894 and 1895 are not stated, but the taxes in controversy for the four years do not amount to more than $1,500 or $1,600. It is conceded they do not amount to $2,000.

Under the tax laws of Indiana, every manufacturing company incorporated under the laws of that State is required to make out and deliver to the assessor a sworn statement setting forth, among other things, the amount and value of its capital stock, the value of all tangible property, and the difference in value between all tangible property and the capital stock (section 73). This statement is laid before the county board of review, and "said board shall value and assess the capital stock and all franchises and privileges" of such company.

> "In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value."

The Bill.

The bill charged as follows:

In 1892 the company owned and returned tangible property worth $5,000. Summoned before the board of review, its secretary appeared and testified that the company owned $5,000 of tangible property and owned certain patents worth $15,000. The bill asserts that because of the ownership of these patents the board fixed the assessment of the capital stock at $20,000. The company paid the taxes on $5,000, amounting to $95. It disputed the taxes on $15,000, amounting to $284.94.

[MEM.—The bill does not state but the record shows that the statement filed returned the market value of the capital stock ($200,000) at $20,000 (Rec., p. 32).]

1893. Tangible property returned, $8,900; value of four patents returned on demand of assessor, $25,000. Board of review assessed the corporate stock, because of the ownership of the patents, at $26,000, or $27,100 in excess of the value of the tangible property. Taxes paid on $8,900, $204.55; in dispute, on $27,100, $464.94.

[MEM.—The bill does not state but the record shows (page 35) that the company returned its capital stock ($360,000) at $36,000, and its total personal property as worth $33,900, and the difference in value between all tangible property and the capital stock at $2,100. To reach the $8,900 of tangible property mentioned in the bill, it is necessary to deduct an indebtedness of $25,000 from its personal property returned at $33,900.]

1894. Tangible property returned, $7,645; value of four patents returned on demand of assessor, $25,000. Board of review assessed property at $36,000, or $28,355 in excess of the value of the tangible property. Taxes for 1894 not due.

[MEM.—The bill does not state but the record shows (page 59) that the company returned its capital stock of $360,000 as worth $36,000, or ten per cent., and its total personal property as worth $32,645, and the difference in value between all tangible property and the capital stock at $12,904. The $7,645 of tangible property mentioned in the bill, it is necessary to refer to the assessment-list for 1894 (Rec., pp. 46 to 49). This shows the total credits $15,491, and the personal property, exclusive of the patents, as $7,645. These two added together amount to $23,136, and the difference between this and $36,000 is $12,864, not $12,904, as set forth in the corporate statement (Rec., p. 59).]

The supplemental bill shows (1895) tangible property returned, $10,137; value of four patents listed by the assessor, $25,000. Board of review assessed the corporate stock, because of the ownership of the patents, at $36,000, or $25,863 in excess of the value of the tangible property. No payment of taxes averred.

> [MEM.—The record shows (page 51) that the company made no return of the value of its capital stock, but returned its personal property at $10,137, and the difference in value between all tangible property and the capital stock at $39,863. How the difference in value between the tangible property and the capital stock was reached, when no return was made of the value of the capital stock, does not appear. The assessment-list for the same year (Rec., pp. 53 to 56) shows notes and accounts, $22,891, and other personal property, exclusive of patent rights, $10,137; total notes, accounts and chattels, $33,028.]

It is to be observed that the board of review did not attempt to assess the tangible property of the corporation including the patents. In no case did it add to the value of the tangible property as returned, the value of the patent rights as returned. What it did do was to assess the value of the capital stock. The excess in value of this assessment over the tangible property, as returned in 1893, 1894, and 1895, exceeded the value of the patent rights as returned.

The Answer.

The answer admits the making of the assessments charged, but avers the plaintiff "is a corporation doing a lucrative manufacturing business, which is well established and widely known, with a large amount of tangible property and a valuable franchise, exclusive of patent rights;" that the market value of its stock for 1894 was $360,000, and for 1892 and 1893 at least $180,000; and that the board of review, in making the assessments for 1892, 1893, and 1894, in no way or manner included or considered the patents, but only the legal taxable property of the company. This answer to the bill is made applicable to the supplemental bill.

ARGUMENT.

I.

The appellee contends, because the law of Indiana requires every person to return, among other things, "all patent rights, describing them and giving the number of each patent and the value of each," that thereby all patent rights are made taxable in Indiana; that in pursuance of this direction the board of review included the value of the patents with the tangible property in assessing the total value of the property of the company, and therefore there was a valuation of patent rights and an attempted taxation of patent rights in violation of the Constitution of the United States.

On the other hand, we contend that the law of Indiana does not require the taxation of patent rights, the return of

such rights and their value being required simply for purposes of information. What the board of review did was to assess the capital stock of this Indiana company, in pursuance of the statute, because its capital stock exceeded in value its tangible property. An increase in the value of capital stock over tangible property owing to the successful prosecution of a manufacturing business, although the business is based in a sense upon certain patents, is properly taxable.

The real contention of this manufacturing corporation, as a careful analysis of the case presented in the record will show, is that because all its capital stock was originally exchanged for patents, the law of Indiana, which applies to all other corporations of Indiana, and requires a valuation of the capital stock whenever it exceeds in value that of the tangible property, does not obtain with respect to it, and that only its tangible property can be assessed and taxed. Whatever amount of capital may have been put into the business, and however much the capital stock may have increased in value by reason of its successful prosecution, this company contends that because its stock was originally exchanged for certain patents its stock is therefore exempt from taxation within the State of Indiana, although it is an Indiana corporation, existing only by the grace of that State. It makes this claim in the present case in the face of the fact that its own secretary testified (Rec., bottom p. 29, top p. 30) that it was expending annually in advertising the business of the company from $40,000 to $50,000; that its president testified (see supplemental page 3, at the close of the record) that its capital stock of $360,000 is worth par;

and that the testimony shows the stock has actually sold (Rec., pp. 28, 29) from 10 per cent. to par.

On the other hand, we contend that the mere fact that the stock of the corporation was originally issued for certain patents does not exempt the capital stock from taxation, where, by reason of the successful prosecution of a manufacturing business, the stock increases in value and exceeds the value of the tangible property. If a patent right be exempt from taxation, it is only so exempt when taxed as a patent right. If a patent right is used in the manufacture of articles, such articles are not exempt, nor is the income from their sale exempt, nor the capital stock to which such income gives value. So if patent rights are sold in part by licenses to others, the income derived from the royalties on such contracts is not exempt, nor is the value of the capital stock created by such royalties. A royalty is simply a contract to pay money at stated intervals in consideration of the use of a patent. If by this use the patented article is manufactured and attached to a machine, neither the patented article nor the machine to which it is attached is exempt from taxation, nor is the royalty which is paid for such use. It is obvious if a promissory note were given for a license to use a patent, the promissory note would not be exempt, neither is the contract to pay royalty exempt. The present company could not do a manufacturing business upon its patents alone. It had to borrow money. With this money it had to build up a business. It had to provide a manufacturing plant, prove the value of its invention, introduce that invention to the public, more particularly the manufacturers of threshers. It expended from $40,000 to $50,000

a year in advertising its business. The value which this money and its contracts and its privileges gave to the stock is certainly taxable.

In assessing the value of the capital stock of this Indiana corporation, the county board of review exercised discretion and judgment. Its finding will not be interfered with unless it is shown that it acted fraudulently or followed an illegal rule. Taxing boards are not restricted to evidence before them, although in this case it can be shown that the evidence submitted amply supported the valuation made. They have a right to act upon their own knowledge of the matter before them. The valuation of the property is more or less a matter of opinion, and a court will not substitute its opinion for that of a board which is on the ground, with special opportunities for inside information.

The question as to whether an illegal item was included in the valuation is a question of fact upon which the court will not enter if, in view of the case presented, it is not clear that the taxing board acted illegally by including non-taxable property. In the long line of cases assessing the property of railroad, telegraph, and express companies, by taking a proportionate part of their capital stock as a guide, it was insisted on behalf of these corporations that property, franchises, and patents located outside of the taxing State and in themselves not taxable were included in the valuation made. But this court refused to review the findings of the taxing boards where it did not appear that there was any gross injustice done the corporation. The last of the telegraph cases is *Western Union Telegraph Company vs. Taggart*, 163 U. S., 1, in which Mr. Justice GRAY delivered the opinion of the court.

On page 18 the court holds that the statute under consideration was valid, although "nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States, or for the value of its real estate or machinery situated and taxed in other States."

On page 28, referring to the value of the real and personal property outside of Indiana and of the franchises granted by the United States and other countries, it is said: "The tax commissioners had the right and the duty, in estimating the value of the plaintiff's property in Indiana, to take into consideration those franchises and the other elements mentioned in this paragraph of the bill."

Touching the allegation that the value of the stock included a consideration of the company's franchises, its contracts with other companies, its past and future earnings, the skill and enterprise of its managers, and its property outside of Indiana, and the further allegation that the valuation made included values which are no part of the true cash value of the property in Indiana, Mr. Justice Gray, speaking for the court, says (page 30): "This is but equivalent to an assertion that the decision of the tax commissioners upon the question of fact committed by the statute to their determination was erroneous," and he quotes from the decision in the Backus case to the effect that the finding of the taxing board creates something more than a mere presumption of fact.

II.

I have gone somewhat into detail in presenting this case, not in order to argue it upon its merits, but to show its real character, for upon that depends whether the circuit court did or did not have original jurisdiction. The suit is one to enjoin the collection of taxes alleged to have been assessed in violation of certain guarantees of the Constitution of the United States. In the bill it was alleged (Rec., bottom page 7) that this suit was one "to resist the deprivation, under color of a law of the State of Indiana, of a right secured by the Constitution and laws of the United States," and, further, that it is "a suit arising under the patent laws of the United States." This averment was for the purpose of bringing the suit within the provisions of the ninth and sixteenth clauses of section 629 of the Revised Statutes, the ninth clause giving the circuit court jurisdiction, irrespective of amount, of all suits at law or in equity arising under the patent laws of the United States, and the sixteenth giving that court jurisdiction of all suits authorized by law to be brought by any person to resist the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. The latter clause obviously has no application to this suit. It relates only to certain civil rights (Illinois *vs.* R. R. Co., 6 Biss., 107). The first (ninth) was held inapplicable by the circuit court of appeals in its decision in this case (80 Fed. Rep., 1, 3).

Judge JENKINS delivered the opinion of the court and says (p. 3):

> While it is true that the bill asserts jurisdiction in the court below in part upon the ground that it is a suit arising under the patent laws of the United States, it cannot be said that in any just sense this is a case arising under the patent laws of the United States, so as to confer jurisdiction by appeal upon this court, and in respect to which its decision may be final. It is true that the wrong complained of had for its subject-matter the taxation of rights secured by letters patent issued by the United States under its patent laws. It is not correct, however, to say that therefore a suit to prevent such taxation arises under the patent laws of the United States (*Brown vs. Shannon*, 20 How., 55; *Hartell vs. Tilghman*, 99 U. S., 547; *Albright vs. Teas*, 106 U. S., 613; *Manufacturing Co. vs. Hyatt*, 125 U. S., 46; *U. S. vs. Palmer*, 128 U. S., 262, 269; *Marsh vs. Nichols*, 140 U. S., 344; *Wade vs. Lawder* (decided March 1, 1897), 17 Sup. Ct., 425).
>
> The question at issue is whether the statutes of the State of Indiana authorizing such taxation are repugnant to the Constitution of the United States. That is not a question arising under the patent laws of the United States. The jurisdiction of the court below, there being no diversity of citizenship of the parties, rested and could rest only upon the ground that the constitutional rights of the complainant below were infringed by the laws of the State of Indiana, which were repugnant to and in contravention of the Constitution of the United States.

Now, the appellee urges in addition that there was an attempt by the taxing officers to deprive it of its property without due process of law, and to deny to it the equal protection of the laws (Brief, pp. 8, 9). These additional grounds urged under the fourteenth amendment do not change the situation nor relieve the appellee of the necessity of showing that the jurisdictional amount was in contro-

versy. In practically every suit to enjoin the collection of a tax alleged to be illegal the plaintiff submits that it is being deprived of its property without due process of law and is being denied the equal protection of the law.

Whatever be the ground upon which it is sought to enjoin the collection of the tax levied by the State, it must be shown that the amount of the tax in controversy is sufficinet to give the court jurisdiction.

In *Linehan Railway Transfer Co. v. Pendergrass*, 70 Fed. Rep., 1, where the tax amounted to less than $2,000, but the ferry-boat upon which it was assessed and levied to more than $2,000, a demurrer to the bill was sustained because the amount in controversy was not sufficient to give the court jurisdiction.

In *Fishback vs. Western Union Telegraph Co.* 161 U. S., 96, where there was an attempt to enjoin the collection of separate county taxes by separate county officers in one suit, it was held that the separate amounts, each less than $2,000, could not be lumped in order to secure jurisdiction.

In *Citizens' Bank vs. Cannon*, 164 U. S., 319, a suit by a bank to enjoin the collection of taxes on the ground that its charter exempted it from such taxation, the court held that the taxes for a series of years could not be aggregated in order to reach the jurisdictional amount.

The court, speaking by Mr. Justice SHIRAS, said, page 322:

> The purpose of the bill is to restrain certain tax assessors and tax collectors from collecting taxes for specific years, and, if the amount of such taxes does not confer jurisdiction, it is, from the nature of things, impossible for a court to foresee what, if any, taxes may be assessed in the future.

III.

But it is insisted that this is a suit arising under the patent laws of the United States, and therefore no jurisdictional amount is required to be shown. I have already quoted the language of the circuit court of appeals in this case (70 Fed. Rep., 1), holding that this is not a suit arising under the patent laws of the United States, and citing numerous authorities in support of that conclusion. The characteristics of a suit arising under the patent laws are referred to in the opinion of the court, delivered by Mr. Chief Justice FULLER, in *United States vs. American Bell Telephone Co.*, 159 U. S., 548, 553:

> Now, actions at law for infringement, and suits in equity for infringement, for interference and to obtain patents, are suits which clearly arise under the patent laws, being brought for the purpose of vindicating rights created by those laws, and coming strictly within the avowed purpose of the act, to relieve this court of that burden of litigation which operated to impede the disposition of cases of peculiar gravity and general importance.

The court accordingly held that a suit to cancel the patent of the Bell Telephone Company was not a suit arising under the patent laws, although the result of that suit might be to deprive the owner of the patent of all franchises and privileges granted in pursuance of the patent laws.

So, in *Marsh vs. Nichols, Shepard & Co.*, 140 U. S., 344, it was held that a bill in equity in a State court to enforce the specific performance of a contract for the sale and transfer of a patent was not a suit arising under the patent laws

of the United States. Said the court, speaking by Mr. Chief Justice FULLER, bottom page 354:

> In this case the State court did not decide any question arising under the patent laws, nor did the judgment require, to sustain it, any such decision. Neither the validity of the patent, nor its construction, nor the patentability of the device was brought under consideration, even collaterally.
>
> In the language of Mr. Chief Justice Taney, *Wilson vs. Sandford* (10 How., 99, 101), the dispute "does not arise under any act of Congress, nor does the decision depend upon the construction of any law in relation to patents. It arises out of the contract stated in the bill, and there is no act of Congress providing for or regulating constracts of this kind. The rights of the parties depend altogether upon common law and equity principles."

So, in the present case. The court is not required to pass upon any question arising under the patent laws of the United States. Neither the validity of the patents held by this Indiana corporation, nor their construction, nor the patentability of the device, is under consideration. No construction by the court of any law in relation to patents is required. The only laws involved and which require construction are the laws of Indiana relating to taxation. The constitutionality of these laws and the validity of the action of the taxing officers under them, when tested by the guarantees of the Constitution of the United States, are involved, and that is all. The appellee claims that under the Constitution of the United States patents are exempt from taxation. The question whether this is so is one arising under the Constitution and not under any patent laws. Conceding that the contention of the appellee is correct, and that patent rights are exempt from taxation, then

the question is, Was there an assessment of patent rights in this case? Does the determination of this require a construction of the patent laws of the United States? Is this a question arising under the patent laws? Certainly not. The question is one arising under the tax laws of Indiana and involves their construction and the action of the taxing officers under them.

The reiterated assertions of counsel for the appellee respecting the importance of the questions involved only go to support our contention that the case is not one arising under the patent laws of the United States, of which the circuit court of appeals would have final jurisdiction, but is a case involving the construction and application of the Constitution of the United States, which may be taken from the circuit court direct to the Supreme Court.

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